

THIRD PARTY INSURANCE

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P R E F A C E T O F O U R T H . E D I T I O N

The last edition of this book appeared as recently as 1959, but since then the Nuclear Installations (Licensing and Insurance) Act, 1959, has become law, and insurers have introduced a radioactive contamination exclusion clause.

In view of the importance of atomic energy in relation to third party insurance three new chapters have been added. They deal with scientific and legal features, with third party insurance for reactors, and with third party risks associated with the use of radioisotopes.

A.G.M.B.
W.A.D.

London,
December, 1960.

P R E F A C E T O T H I R D E D I T I O N

Since the second edition of this book was published, there have been various new legal decisions while several recent statutes have an important bearing on third party or public liability insurance. The wording of proposal and policy forms is not standardised, but there have been noticeable trends illustrated by the revised forms in use by the leading insurers.

All these features have received attention in this new edition, and in view of the growing importance of products liabilities a separate chapter has been included on this subject.

Sincere thanks are due to Mr. R. F. N. Walker (Alliance), who has read the script and made many useful suggestions, to Mr. S. Merrill, A.C.I.I. (Alliance), for his help with the claims chapter, and to Mr. L. E. Hammond, LL.B., F.C.I.I. (White Cross), who has commented on the legal sections of the work. Miss B. Manser has once again checked the proofs and prepared the index.

A.G.M.B.
W.A.D.

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P R E F A C E T O S E C O N D E D I T I O N

Since this book was written in 1932, there have been many changes and developments in the business of third party, otherwise termed public liability, insurance.

Statute law has produced important alterations, notably the Law Reform (Miscellaneous Provisions) Act, 1934, and the Law

Reform (Contributory Negligence) Act, 1945. By the former, *inter alia*, death of the person responsible for bodily injury to, or damage to the property of, a third party no longer terminates a cause of action because the liability is now continued in the legal personal representatives. The other Act provides for the apportionment of blame, as has long been the practice in marine insurance law, so that contributory negligence is not a complete defence to a third party claim.

There have, of course, also been numerous important legal decisions and the main features of modern case law have been included in the new edition. Space has likewise been given to new types of third party insurance often devised as a result of case law, as, for instance, the so-called personal liability contract. It must also be remembered that the business is closely connected with third party motor insurance and motor case law often influences the legal position as, for instance, the effect of *Benham v. Gambling* (1941) in which the House of Lords reduced the damages from £1,200 to £200 for loss of expectation of life. This decision is expected to lower the scale of damages for this type of claim generally.

Proposal and policy forms have been revised from time to time and many insurers have adopted the scheduled form of policy.

The opportunity has been taken thoroughly to revise the text and to incorporate all the main alterations in practice. At the same time, an endeavour has been made to do this within reasonable compass, the needs of The Chartered Insurance Institute examination student having at all times been prominently borne in mind.

The authors acknowledge their gratitude to various friends who have made useful suggestions, and particularly to Mr. Denis A. Marshall, Solicitor, of Messrs. Barlow, Lyde and Gilbert. Their thanks are also due to Miss B. Manser for the careful checking of the proofs and preparation of the index which made it possible to publish the book with the minimum of delay during a very busy period.

A.G.M.B.
W.A.D.

London,
July, 1947.

P R E F A C E T O F I R S T E D I T I O N

Third party, or public liability insurance, as it is often termed nowadays, is one of the most interesting features of accident

business, because of the many diverse risks which are proposed for insurance under this heading. They range from ordinary shopkeepers' and landlords' third party proposals, to those for indemnities in respect of legal liability for accidents to third parties inseparable from the erection, maintenance and use of the 132,000 volt power lines, which are now extending all over the country.

Then again, interest is aroused because such diverse risks cannot be rated by the standardised methods suitable for motor and employers' liability proposals. Third party underwriting calls for wide experience and initiative on the part of the official concerned, combined with ability to visualise each risk, as it were, and the accidents which may arise.

Legal decisions upon cases which from time to time come before the Courts, emphasise the necessity of obtaining adequate protection in respect of public liability risks, for even the pedestrian may be held liable to pay compensation for accidental personal injury or damage to the property of third parties caused by his negligence.

To our many friends who have so freely made suggestions and kindly criticisms, we express our indebtedness. Our thanks are due especially to Messrs. E. Booth and R. H. Roe, of Messrs. Barlow, Lyde and Gilbert, who have perused the legal sections of the work.

It has been our endeavour, throughout this book, to present the outstanding features of the business in language as simple as possible, and we have aimed at providing a handbook worthy of the attention of the insurance inspector, not primarily concerned with third party business, while Chapter XIII has been specially written to enable the junior surveyor to grasp the lines upon which third party surveys should be carried out. It is hoped, furthermore, that the following pages will be of assistance to students preparing for The Chartered Insurance Institute examinations and to those junior members of insurance companies' staffs who are anxious to obtain a clear outline of the principles and practice of the third party department.

A.G.M.B.
W.A.D

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CHAPTER I

INTRODUCTION

Third party—also termed public liability—insurance is one of the main sections of accident insurance business. It covers a variety of risks in widely differing circumstances, so that hardly two proposals are alike, and this diversity provides interesting problems for the underwriter. There is considerable scope for expansion because people are not always alive to the legal liabilities which they shoulder and the desirability of transferring those liabilities to insurers by means of third party insurance, while case law from time to time brings hitherto unsuspected liabilities to light for which new types of policies are devised.

HISTORY

In the closing years of the eighteenth century and the early decades of the nineteenth, there were marked changes in every department of economic life. In industry, the industrial revolution brought about the replacement of manual labour by power-driven machinery for most processes of manufacture, which necessitated the erection of large factories in order to house the new and expensive equipment. This development caused the small master-man to be replaced by the capitalist, while the semi-independent skilled craftsman became a wage-earner working under the directions of a foreman and required to feed or guide the new machines, with all the attendant risks of accident. The increase in the volume of production and consequent growth in trade led to a commercial revolution. In agriculture, the agrarian revolution was responsible for the introduction of better methods of farming, consequent upon enclosures in place of the old open field system. Rotation of crops was adopted, with machinery and scientific methods generally. Lastly, there were corresponding developments in transport, the most important being the invention of the railway, the steamship, and, later, the mechanically-propelled road vehicle and the aeroplane.

It is with this period of change and the increased risk of accident that the beginnings of accident insurance business are associated. Accident business, therefore, is a much more recent development than marine, life, or fire insurance. Many of the early companies were promoted for the transaction of personal accident insurance because of the new risks to which life and

limbs were subject by reason of railway travel. They often included the word "railway" in their names.

Third party insurance, however, did not develop until towards the end of the nineteenth century, and the main reason for this delay was the belief that such insurance was contrary to public policy. There was a change of attitude towards liability insurance generally with the passing of the Employers' Liability Act, 1880, and, since 1st January, 1931, there has been a complete swing of the pendulum, for, on that date, third party motor vehicle insurance was made compulsory by the Road Traffic Act, 1930.

There have been various reasons for the growth of the business. Legislation has created new obligations, the public have become increasingly aware of their legal rights largely because of the press reports of actions for damages following motor vehicle road and other accidents, and case law as noted already has sometimes marked the start of new sections of the business. With present-day high awards of damages and the litigation-complex, no one can afford to be without adequate third party insurance protection.

Of the many types of risks under the general heading of third party insurance, those relating to horse-drawn vehicles are the oldest covered, and the pioneer was the *London and Provincial Carriage Insurance Co., Ltd.*, in 1875. Driving risks were commonly insured by firms who owned a large number of horses and vehicles, but the policies offered were very different from the comprehensive type of policies that can be issued for such risks at the present time. Insurers, who then had but little information concerning claims costs to guide them, proceeded on very cautious lines and hedged their policies about with many restrictions which would be regarded as irritating to-day. For example, policies were rarely issued to provide for limits of indemnity in excess of £100, and at the same time the insured was required, on penalty of invalidating his policy, to notify all changes in the personnel of his driving staff, in the vehicles in his possession, and in the number of horses engaged in his work. Alterations are now readily dealt with by adjustment at the end of each period of insurance.

Indemnities provided in those early days related only to accidents where negligence on the part of the insured's drivers could be established and in the absence of proof of negligence there was no liability under the contract. The very low limits of indemnity were usually expressed as being inclusive of costs payable to any claimant and of the costs of the defence of the

insured—an unsatisfactory feature which has now almost entirely disappeared.

The triple risk policy, covering loss of or damage to vehicles and theft of and fatal injury to horses as well as third party risks, was in existence by 1915 and as the result of the gradual improvement in the scope of the indemnity offered, insurance of driving risks on this basis became more popular. Instead of policies being effected only in respect of heavy risks, such as those of haulage contractors and horse-drawn trams, smaller owners began to insure, and this tended to give insurers a wider experience upon which to fix their rates. The policy cover still did not approach the modern terms, for vehicular damage was not insured unless the accident occurred upon the public highway, while fatal injury to horses was covered only in the event of a collision with another vehicle. In very recent times it is often found that the drivers' risk is included in a third party (general) indemnity.

General third party policies (that is, those providing indemnities in respect of accidents not arising out of the use of vehicles) were issued soon after the passing of the Employers' Liability Act, 1880. This Act increased the liabilities of certain employers, and it began to be realised that an accident might cause injuries to members of the public as well as to employees. Neither the term third party nor public liability insurance was in use in those days and the business was described as "outside risk insurance". Policies were confined mainly to builders and building contractors who realised that the omission to insure against the consequences of negligence, on the part of their employees, might be such as to deprive them of the profit to be expected from their contracts, or even to render them insolvent should serious claims be brought against them on account of injury to, or damage to the property of, third parties.

DEVELOPMENT

The main landmarks in the development of third party insurance are summarised below:

- 1875 Third party (drivers') risks were insured.
- 1888 The first third party lift policies were issued in this year.
- 1897 Property owners' indemnities were offered by the *Northern Accident Insurance Co., Ltd.*, and the liabilities imposed by the Housing of the Working Classes Act, 1890 (and amending legislation), encouraged the growth of the business.

- 1907 Railway wagon owners' indemnities arose out of the issue of a circular in that year by the Associated Railway Companies, which set out their revised regulations applicable to private owners' wagons.
- 1909 Scholars' indemnities were devised because of the case of *Ching v. Surrey County Council* (1910), 26 T.L.R. 355, in which damages were awarded against the Education Authority for injuries sustained by a boy scholar.
- 1919 Golfers' and other sportsmen's indemnities were drafted about this time, and demand for insurance was stimulated by *Castle v. St. Augustine's Links, Ltd.* (1922), 38 T.L.R. 615, in which damages of £450 were awarded to the plaintiff who lost an eye because a golf ball struck the wind-screen of his taxi.
- 1925 In *Stratton v. Huleatt* (unreported), a boy lost a leg through the fall of a defective tree and damages of £1,000 were awarded. This was the starting point of estate owners' and farmers' indemnities.
- 1927 The personal liability policy was first offered in this year.

Legislation passed in recent years, for example, the Third Parties (Rights against Insurers) Act, 1930, and the various Law Reform Acts, has reached the Statute Book primarily because of the large increase in the number of motor vehicle road accidents. The legislation, however, has usually affected legal liabilities to the public for accidents caused by mechanically-propelled vehicles or otherwise, and it has influenced general third party insurance accordingly.

There was an increasing tendency for speculative actions to be commenced, in the hope that, rather than allow the case to proceed with its consequent publicity, the defendant would prefer to make a settlement out of Court. Such practices gave weight to the necessity for indemnities in respect of the costs and expenses inseparable from the settlement of bogus or fraudulent claims, protection in respect of which is now almost invariably given in the ordinary terms of a third party policy.

THE PRESENT DAY

The scale upon which business generally is now conducted has made third party insurance, in its many forms, a lasting necessity. In recent years there has been a rapid development of third party policies, both as regards the scope of the cover afforded and the limits of indemnity provided.

Among the extensions of the normal indemnity which are now freely written, are liability for accidents arising out of fire and explosion, accidents or illness by reason of foreign or deleterious matter contained in food or drink, products liabilities generally, and claims on account of defective sanitation. So flexible is the scope of third party insurance that there are but few legitimate risks which may not be the subject of a third party indemnity, of one kind or another, whether they be those inseparable from the normal activities of the ordinary man in the street, or those associated with the management of a large business necessitating the employment of numerous workmen, for the consequences of whose acts or omissions the employer may be responsible.

SCOPE FOR EXTENSION

It is probably true that the majority of business firms insure against such risks as fire and burglary in order to protect their own property, but there is still scope for new third party insurance business to be obtained. Even to-day, in spite of the numerous accidents and accounts of damages awarded, which appear in the daily press, with the efforts made by insurers to make the insurance facilities known, there are many thousands of businesses without suitable third party insurances. The range of policies available is such that almost every business can be accommodated, and it is one of the objects of this book to indicate the principal types of policies issued, in sufficient detail to enable those not fully conversant with the intricacies of third party insurance to decide the lines upon which prospective policyholders can be approached.

Experience shows that policies are often issued in standard form with no steps taken to ensure that the indemnity afforded meets all the legitimate requirements of the proposer so far as regards his liability to the public for accidents and other mis-haps. Third party policies should be "tailor-made", for nothing can be more annoying than to effect an insurance only to find when a claim occurs that it is outside the terms of the contract. Apart from the adequacy of the limit of indemnity (see p. 6), it is essential to ascertain whether or not any of the exclusions found in the policy in its normal terms require modification as, for example, extensions by endorsement in respect of fire and explosion (bodily injury and/or damage to property) risks, food and drink risks or products liabilities generally both at home and overseas. Foul-berthing risks (involving damage to ships by resting unevenly on berths) or the presence on the premises of

domestic animals are other examples, among many, of the importance of arranging indemnities to suit individual circumstances. Sometimes, it is necessary to arrange the requisite extra protection by means of additional policies, e.g., passenger lifts and cranes.

The effect of the Law Reform (Contributory Negligence) Act, 1945, must be taken into account. Where both parties are to blame for an accident, that blame must now be apportioned and the damages assessed accordingly; hence there is greater likelihood of being involved in liability than previously. Insurance protection is therefore essential.

LIMITS OF INDEMNITY

While in the early days of third party insurance limits of indemnity higher than £100 were the exception rather than the rule, the current practice is to discourage proposals for limits which, in present-day circumstances, may be regarded as luring the policyholder into a false sense of security. Many insurers have deleted the very small indemnity limits from their rating schedules and few will issue policies for low limits without pointing out to the proposer the dissatisfaction which is likely to arise when a claim is made in respect of a serious accident for which the policy may provide a partial indemnity only.

Any action where the claim for damages exceeds £400 may be commenced in the High Court with its correspondingly higher scale of costs. Even if the defendant wins his case, he may find that he is unable to recover his costs from the unsuccessful plaintiff and, if it has been necessary to brief well-known counsel, the costs may be considerable. Moreover, in recent years there has been a tendency to award increasingly heavy damages.

Insufficient attention is as a rule given to the amount of indemnity for any one accident. Although £10,000 or £25,000 may be reasonably sufficient as a limit for the majority of ordinary risks, a limit of this magnitude may be inadequate for some undertakings. For example, several hundreds of thousands of people may congregate at football grounds and thus create an enormous potential liability in the event of the collapse of a stand, as happened at the Rugby League Cup Semi-final on the Rochdale ground in April, 1939. Then there are the heavy liabilities associated with petrol refuelling units on airfields, where fire caused by negligence may spread far beyond the aircraft and cause bodily injuries and damage to other property.

If there is no catastrophe risk, it is in these days by no means uncommon to grant an indemnity unlimited in amount but if there is a serious catastrophe hazard by reason, for instance, of spreading fires or explosions, a limit is usual having regard to all the circumstances but it can be as high as £1,000,000 or even more for any one accident.

In view of limits of this magnitude, the practice of "layering" has been introduced. The "underlying" policy may provide an indemnity of £100,000 any one accident with normal reinsurance arrangements, according to requirements. Then there are further insurances or reinsurances on an excess basis, so that the first covers, for example, £400,000 excess of the "underlying" policy (£500,000 in all), the next "layer" a further £500,000 (£1,000,000 in all) and so on, according to the total limit required. Some sections of the market specialise in this type of cover, and it is sometimes thought that better terms may be obtained than those for one policy with, say, a limit of £1,000,000 any one accident.

CHAPTER II

PRINCIPLES OF INSURANCE

UTMOST GOOD FAITH

Contracts generally are governed by the common law principle of "caveat emptor" (let the buyer beware) but, in view of the peculiar nature of insurance contracts, this principle does not apply to them. Insurance contracts are contracts "uberrimae fidei" (of the utmost good faith) for the reason that each such contract as between the parties thereto relates to a risk or liability to be undertaken by one of the parties, the full circumstances of which are known only to the other party—the proposer. This requirement of utmost good faith, which amounts to an implied condition, forbids that either party shall conceal from the other any material thing which he privately knows. It is necessary, therefore, for the parties to make absolute disclosure of all material facts affecting the risks to be undertaken and the terms of the proposed indemnity. This duty of disclosure was fully dealt with by Lord Mansfield in the leading case, *Carter v. Boehm* (1766), 3 Burr. 1905, when it was stated:

"Insurance is a contract upon speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the insured only; the underwriter trusts to his representations, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. The keeping back of such a circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived, and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement. . . . Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact and his believing the contrary."

All facts connected with a proposal need not, however, be disclosed, for the insurer can require disclosure only of what are known as material facts, and there are exceptions in certain

special cases which are mentioned hereafter. A material fact is one which is material to the proper estimation of the risk, whether or not the proposer believes it to be material, and it was defined in *Rivaz v. Gerussi* (1880), 6 Q.B.D. 222, as one which would affect the judgment of a rational underwriter in considering whether he would enter into the contract at all, or enter into it at one rate or another.

The types of facts which need not be disclosed may be summarised as follows:

1. Facts or circumstances which are known to the insurer however they may have come to his knowledge. Matters of common notoriety come under this heading, and where an insurer surveys the premises or the risk—a fairly common occurrence in third party insurance—the same rule applies. The proposer must not, of course, deliberately conceal anything from the surveyor.
2. Circumstances which diminish the risk. It is to be anticipated that the proposer will not neglect to furnish information on such points, which may, of course, result in a reduction in premium.
3. Facts or circumstances (a) the knowledge of which is waived by the insurer; (b) which are governed by the conditions of the policy; (c) which can be elicited by enquiry, where the information given by the proposer is sufficient to put the insurer on enquiry.

The duty of utmost good faith is not confined to the proposer. The insurer, for his part, must also observe the obligation in his dealings with the proposer or the insured. For example, it would be a breach of utmost good faith, on the part of the insurer, were he to accept an insurance for a liability which he knew did not exist, or were he to issue a policy which was unenforceable at law.

The duty, in so far as it relates to a proposal, continues until the contract becomes operative and thereafter it will be found usually to be governed by the policy conditions.

The Contractual Duty

This inherent, or common law, duty of utmost good faith, must be distinguished from the contractual duty. In other words, by the terms of a particular contract it is possible either to restrict or to extend the ordinary duty of utmost good faith at common law. In most accident insurance contracts, includ-

ing third party indemnities, the duty is extended by means of the proposal form and declaration which must be completed and signed by the proposer. In the declaration the proposer warrants the truth of the statements made in the form and as this constitutes the basis of the contract by direct reference in the policy itself, it follows that *any* inaccuracy in the information given on the form is sufficient to render the contract voidable by the insurers, whether or not the inaccuracy is material at common law. The legal view is that, as the insurers have imposed this requirement, they must themselves consider all the information on the form to be material, so far as they are concerned, irrespective of the common law obligation.

INSURABLE INTEREST

This principle is not of such obvious importance in third party as in other classes of insurance, but in order that a general survey of insurance principles may be made, it is included here with particular reference to property damage such as might be provided for by a driver's policy.

Contracts of insurance need carefully to be distinguished from wagers, and the mere effecting of a policy does not give the policyholder, on the occurrence of the event mentioned in the policy, a right of recovery against the insurer. In other words, the insured must have an insurable interest—a legal right to insure. In the leading case of *Lucena v. Craufurd* (1806), 2 Bos. & P. (N.R.) 269 H.L., an insurable interest was defined as "a right in the property or a right derivable out of some contract about the property which in either case may be lost upon some contingency affecting the possession or enjoyment of the property".

There are three essentials for a valid insurable interest, whether in property, or in a right, or in respect of a potential liability, as follows:—

1. There must be a physical object (or a chose in action in some cases) on which the insured peril can operate, or there must be a potential liability which the insured peril may cause to come into force.
2. This object or potential liability must be the subject-matter of the insurance.
3. The insured must bear some relation thereto, recognised by law, in consequence of which he stands to benefit by the

safety of the property, or the absence of liability, and to be prejudiced by the loss of the property, or the creation of liability.

INDEMNITY

Most contracts of insurance, with the exception of life and personal accident policies, are contracts of indemnity, that is to say, on the happening of the event insured against, the insured is entitled, within the limits of the policy and its conditions, to be placed in the same position as he occupied immediately before the loss, as though it had not occurred. In other words, the object of the principle of indemnity is to make certain that the insured does not make a profit out of his insurance. So far as third party insurance is concerned, the measure of indemnity to which the insured is entitled, subject again to the limits of indemnity expressed in the policy, will be his actual loss as a result of the occurrence. Thus, if a claim is made against him and damages are awarded to a third party, the amount which he will be entitled to recover will, subject to the policy limits, be the sum awarded in damages, costs awarded to the claimant, and expenses necessarily incurred in the insured's defence.

Certain policies dealt with in the third party department make provision for damage to the insured's own property. In such cases, it is usually practicable to arrive at an equitable monetary consideration which ensures that the policyholder is placed in the position which he occupied immediately before the loss. Consequential losses of the insured, however, are rarely, if ever, covered by third party policies.

The leading case on the subject of indemnity is that of *Castellain v. Preston* (1883), 11 Q.B.D. 380, C.A., where Lord Justice Brett expressed the principle in the following words:

“The very foundation, in my opinion, of every rule which has been applied to insurance law is this, namely, that the contract of insurance contained in a marine or fire policy is a contract of indemnity, and of indemnity only, and that this contract means that the assured, in a case of a loss against which the policy has been made, shall be fully indemnified, but shall never be more than fully indemnified. That is the fundamental principle of insurance, and if ever a proposition is brought forward which is at variance with it, that is to say, which either will prevent the insured from obtaining a full indemnity, or which will give the insured more than a full indemnity, that proposition must certainly be wrong.”

SUBROGATION

Subrogation is a corollary of the principle of indemnity, and its object is to prevent an insured recovering from two sources in respect of loss or damage which has been sustained. In its application to a contract of insurance, subrogation means that after an insurer has indemnified the insured in respect of his loss, he is entitled to take over any alternative rights which the insured may have against other parties and to enforce them for his own benefit, in order to reduce or extinguish the amount of the loss. In *Castellain v. Preston (supra)*, this was dealt with in the judgment in the following words:

". . . as between the underwriter and the assured, the underwriter is entitled to the advantage of every right of the assured whether such right consists in contract, fulfilled or unfulfilled, or any remedy or tort capable of being insisted on, or in any other right, whether by way of condition or otherwise, legal or equitable, which can be, or has been exercised or has accrued, and whether such right could or could not be enforced by the insurer in the name of the assured by the exercise or acquiring of which right or condition the loss against which the assured is insured, can be, or has been diminished."

Difficulty may be experienced where the limits of the policy are less than the loss which the insured has sustained. The insurers are then not subrogated to the whole of the rights of the insured, and the insured is entitled, on his own account, to proceed against the responsible parties with a view to effecting recovery, provided always that he claims for the full amount of his loss without taking into account the amount which he has recovered from the insurers. If he should recover more than the amount not provided for by his policy, then that excess will be held in trust for the insurers.

Most policies contain a subrogation condition which amends the common law position in so far as the particular contract is concerned. At common law, the insurers cannot take over the insured's rights until they have indemnified him, but under the usual policy condition, the insurers are entitled to proceed in the insured's name, but at their own expense, before they have indemnified the insured.

CONTRIBUTION

Contribution also prevents the insured from recovering the amount of his loss from more than one source and applies where

two or more insurances, in relation to the same insurable interest, exist in respect of the insurance of the same subject-matter. A definition of the principle is to be found in the leading case of *North British and Mercantile Insurance Company v. Liverpool and London and Globe Insurance Company* (1877). 5 Ch.D. 569, C.A., known as the King and Queen Granaries Case, where it was stated that:

“Contribution exists where the same thing is done by the same person against the same loss, and to prevent a man first of all from recovering more than the whole loss, or if he recovers the whole loss from one which he could have recovered from the other, then to make the parties contribute rateably. But that only applies where there is the same person insuring the same interest with more than one office.”

Contribution is really a matter as between insurers and rarely affects the insured. At common law, the insured is entitled to claim from his insurers in any order he pleases, but any insurer paying more than his proportion may enforce contribution from his co-insurers.

The policy condition, like the subrogation condition, modifies the position at common law, for most policies provide that where there is more than one insurance, the insured must bring his claim simultaneously against all the insurers concerned, but may recover a *pro rata* share only from each.

PROXIMATE CAUSE

The doctrine of proximate cause is of the utmost importance in third party insurance, not only as a common law principle affecting all insurance contracts, but in so far as the insured will be liable only to indemnify third parties who may bring claims against him when the injury or damage complained of is proximately caused, e.g., by a defect in premises or furnishings, or by the insured's negligence, or that of his employees. Here, however, consideration need be given only to proximate cause as an insurance principle and the reader is referred to Chapter III, dealing with legal aspects of public liability, for information about its application to liabilities to third parties.

Causa proxima non remota spectatur (the immediate, not the remote cause is to be regarded) is a legal maxim and is applicable to claims under contracts of insurance. In other words, the insurers are only liable where the loss sustained is proximately or immediately caused by the peril insured against. The mere happening of

a loss, or the sustaining of damage, is not necessarily sufficient to establish a claim under a policy and it is always necessary for the insured to show that the loss was immediately caused by the peril insured against, or, under a third party policy, by an accident within the meaning of the contract. In the words of Bacon, "It were infinite for the law to consider the cause of causes, and their impulsions one of another; therefore, it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree".

For a standard definition of proximate cause, attention is directed to *Pawsey v. Scottish Union and National Insurance Company* (1907), *The Times*, 17th October, where it was given as:

"the active, efficient cause that sets in motion a train of events which brings about a result, without the intervention of any force starting and working actively from a new and independent source."

In brief, the principle ensures that the consideration of losses or claims is brought within reasonable bounds.

REINSURANCE

Reinsurance possibly concerns practice more than primary principles, but it is merely the application of the principle of spreading risks over as wide an area as possible, and this must serve as the justification for including reinsurance as a principle of the business.

Under many third party policies the indemnity provided is greater than the amount that the insurer considers it prudent to bear solely for its own account. The insurer therefore seeks ways and means of reducing its interest to what is referred to as its retention. For a direct writing insurer (i.e., the insurer which issues the original policy) this process is called reinsurance, and where an insurer wishes to reduce its liability on part of a risk that has been accepted by way of reinsurance the process is termed retrocession.

The several methods are similar for reinsurance and retrocession; hence, reference is made below to reinsurance alone.

Facultative Reinsurance

Facultative reinsurance relates to the separate reinsurance of individual risks, and it is the method usually adopted where a company's account is small or where the insurer wishes to arrange special reinsurance. In order to obtain facultative reinsurance, the direct insurer approaches another direct-writing

insurer or a specialist reinsurance office to accept similar, greater, or perhaps smaller amounts of the risk concerned, on identical terms. When cover is required, a slip giving details of the risk may be prepared which the reinsurer may initial with a note of its acceptance. The details may subsequently be confirmed by a formal request note for reinsurance, in exchange for which a take note may be issued by the reinsurer. In order to save time, however, a reinsurance may be placed over the telephone and formal request and take notes may not be used. After the issue of the original policy, a specification setting out a brief summary of the policy is sent to the reinsurer, when the latter prepares a stamped guarantee policy.

In any event, this method of reinsurance is cumbersome when an insurer transacts a considerable volume of business. It is not greatly used in third party insurance, except for the purpose of relieving the strain under an obligatory reinsurance treaty (described below), as may happen when a particular risk is unusually large or considered heavy for one reason or another, so that it is excluded from the scope of the insurer's obligatory treaty. Another illustration may be found in reinsurance of catastrophe risks, such as those associated with fire and explosion.

Treaty Reinsurance

In order to save clerical work and the expense inseparable therefrom, the direct insurer may enter into an obligatory agreement with another insurer or with a specialist reinsurance office (usually termed a reinsurance treaty) to reinsurance business on a quota share, surplus or excess of loss basis. By this means acceptance by the reinsurer is obligatory and automatic; request notes, take notes, specifications and other routine necessities of the facultative method are avoided. At the same time, immediate protection is available from the moment any risk is accepted. Abridged details of each risk ceded and of each alteration to a current reinsurance may be advised to the reinsurer by means of a bordereau, but there is a growing tendency to give less and less information to the reinsurer who places complete reliance on the underwriting policy of the direct insurer. In fact, the "blind" treaty is now common, under which the reinsurer is merely advised periodically of premiums and claims.

Quota Share. When an insurer begins to transact third party business or while a third party account is small, it is often the practice to enter into a treaty in which the reinsurer automati-

cally accepts a uniform share of each and every policy up to a given limit, so the direct insurer's and the reinsurer's liability will be a fixed percentage of each and every policy.

Surplus Method. The direct insurer's retention is known as a line, and by this method a treaty is arranged to cover three, four or more lines of the surplus over and above the retention. If an insurer decided to retain £1,000 of liability under a policy for £10,000 any one accident and had a nine-line surplus treaty, then the whole of the surplus would be absorbed by the treaty. This would likewise apply to any higher retention, but if less than one-tenth were retained the balance above nine lines would have to be reinsured facultatively.

Excess of Loss. Under this type of reinsurance the direct insurer agrees that it will itself pay the whole amount of each and every claim which may arise up to a certain agreed limit, and the reinsurer undertakes to indemnify the direct insurer against all further amounts which it may be called upon to pay for any one claim in excess of this amount up to some further agreed limit, such as £250,000 or more for any one accident. Naturally, to re insure the excess of a given amount in respect of each and every claim is not so costly as to re insure a proportion of all business, since it is to be expected that the reinsurer on an excess of loss basis will be called upon only with relative infrequency to contribute towards a claim. By the adoption of excess of loss reinsurance, therefore, an insurer is able to avoid unnecessary depletion of his whole account, since he pays away a relatively small proportion of his premium income for reinsurance, and that proportion is dependent mainly on the agreed limits and, as always, on experience.

Pooling Schemes

Catastrophe risks and other risks where for some good reason it is desired to spread the risk over a wide field are sometimes re insured in a pool, formed by a number of insurers who agree to place all premiums received for a certain class of business into a common pool from which all claims are met. Sometimes, a part only of all risks will be re insured in this way. The majority of the industrialised countries are to-day concerned with nuclear energy and a public liability nuclear energy pool is an up-to-date illustration of this type of reinsurance.

In this manner all members of the pool receive a small share of all the risks within the pool, so that undesirable or otherwise heavy risks likely to involve substantial losses and considered

to be too great for reinsurance on normal terms to be satisfactory can be reinsured with the security of the whole of the available funds of the participants.

The profits, if any, and the expenses are shared by the members of the pool in proportion to their agreed limits. If a part only of all risks may be reinsured in this way, the profits and expenses are dealt with accordingly.

CHAPTER III

LEGAL PRINCIPLES OF THIRD PARTY INSURANCE (I)

Third party insurance is designed primarily to provide an indemnity to the policyholder in respect of liability at law for accidental bodily injury to, or accidental damage to the property of, another—the third party. Such liability may be incurred in various ways, but it is not practicable to include every conceivable liability in the indemnity under a third party policy. This means that the liability of the insurer to the policyholder may be more limited than the liability of the insured to the public.

Before the student can understand the types of liabilities with which third party insurance is concerned, he must have some knowledge of the legal system.

THE LEGAL SYSTEM

The law of England, as a whole, is not a simple code; it has never been promulgated systematically. It is rather a composite structure the various features of which have been added from time to time. There are four main elements in the system, namely, (i) common law, (ii) equity, (iii) statute law, and (iv) case law.

Common law originated in the old traditional laws of the land. Before 1066 no law common to the whole country existed, and disputes were settled according to the custom of the district in which they occurred. In the reign of Henry II, however, itinerant judges were established and those judges began to discriminate, enforcing only the customs which in their opinion were most suitable. When people were unable to obtain justice in the manner indicated, petitions used to be made to the King, but it soon became impossible for him personally to deal with all such petitions. The King therefore handed them over to the Chancellor for attention. He was not a lawyer, and in his Court—the Court of Chancery—he followed the dictates of his own conscience. No fixed standards were applied, although in time it became usual to follow precedent. The rules thus established became known as **equity** and they did not necessarily coincide with common law principles. The existence of two rival Courts, however, was intolerable and this was remedied by the Judica-

ture Acts, 1873 to 1910, consolidated by the Supreme Court of Judicature (Consolidation) Act, 1925. All the Courts of the Supreme Court of Judicature now apply both the rules of common law and the rules of equity. In the event of conflict the rules of equity prevail.

Statute law is the most effective form of law and is the legislation embodied in Acts of Parliament. It may amend the common law where doctrines are out of date by reason of modern conditions, new liabilities may be created by legislation, or a section of the law may be consolidated by statute. All judges must apply statute law and, where necessary, construe its meaning.

In all three branches—common law, equity, and statute law—it has been customary to follow precedent. In other words, judges have always given the reasons for their decisions, so that their judgments are, in fact, public expositions of the law. These judgments are recorded in the series of law reports and in this way **case law** has been gradually accumulated.

LIABILITY FOR ACCIDENTS

Liability for accidents to third parties arises out of that branch of the common law known as the **law of tort**. Briefly, a tort (French "wrong") is a civil breach of a personal duty owed to one's fellow citizens in general, as opposed to a breach of contract which refers to a breach of a duty to a single person with whom a contract has been made. Torts may be of various kinds,* e.g., slander, nuisance, trespass, and assault, but in dealing with liabilities assumed on behalf of the insured under contracts of insurance, the primary concern is with **negligence** and, occasionally, **nuisance**.

At times, third party insurers are concerned with liabilities arising out of **contract**; also with liabilities imposed by **statute**, such as the Housing Act, 1957.

(a) Negligence

Every person must behave in such a manner as not to cause bodily injury to, or damage to the property of, another person, and it is the breach of this general duty which constitutes negligence. The classic definition of negligence is "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent

* Some torts give rise to criminal responsibilities as well as civil liabilities, but the present subject is limited to civil responsibilities only.

and reasonable man would not do," *Blyth v. Birmingham Water Works Co.* (1856), 11 Ex. 781, but this applies only where there is a duty to take care. For example, if a person who is walking along the seashore sees someone in difficulties while bathing, but stands by and watches the bather drown, he is not acting as a reasonable man would do. Nevertheless, he is not liable for negligence because he is in such circumstances under no legal duty to the bather.

(b) Nuisance

Nuisance has been defined in the *Law of Tort* (Winsfield, 3rd Edn., p. 426) as "the unlawful interference with a person's use or enjoyment of land, or of some right over, or in connection with it". Nuisance arises only in connection with the use of land. There may, for example, be interference with a person's right of free passage over a highway.

The relationship of nuisance and negligence, for the present purpose, can be illustrated by the owner of a property who may have on his land a tree so dangerous that, in a high wind, it falls on the highway and thereby injures a passer-by. The injured person then has a right of action on the grounds of both nuisance and negligence.

It is not always easy, however, to distinguish nuisance from negligence. *Halsbury* (Hailsham Edition), Volume 24, at p. 19, states:

"The distinction between nuisance and negligence, broadly speaking, is that in the acts or omissions which are classed as nuisances the duty on the part of the wrongdoer is an absolute one, and if damage be proved liability arises, while, in the omissions which fall within the sphere of negligence, liability always depends upon the failure to use the degree of care which was necessary to be used in the particular circumstances."

A **public** nuisance is one which inflicts damage, injury, or inconvenience on all the Queen's subjects or on all those of a particular class coming within the scope of its operations, e.g., a dangerous tree overhanging the highway. A private person has no right of action based on a public nuisance unless special damage is inflicted over and above that on the general community. For example, there would be a right of action if the dangerous tree fell and injured a passer-by.

A **private** nuisance affects only those immediately within the scope of its operation. A dangerous tree overhanging a neighbour's land would constitute a private nuisance.

(c) Contract

Liability based on tort may be readily distinguished from that dependent on contract, since in tort there is no direct relationship between the parties concerned, whereas in contract there is a contractual relationship—in other words, there is privity between the parties. In some circumstances there may be alternative rights of action by reason of the law of tort or in consequence of breach of contract.

By way of illustration, an engineer who carries out a faulty repair to a vehicle is liable to the owner of the vehicle in contract for breach of implied warranty that the repair work will be carried out with all reasonable skill, and also liable in tort for his negligent workmanship.

Normally, the special damage or out-of-pocket loss only can be recovered for breach of contract, whereas in tort the wrong-doer may also be liable for general damages.

(d) Statute

Liability may be created by statute or common law liability may be limited in this way. The Hotel Proprietors Act, 1956, for example, limits the common law liability of an hotel proprietor or an innkeeper. Various statutory liabilities are examined later.

LIABILITY OF EMPLOYER FOR NEGLIGENCE OF SERVANTS

The liability of an employer for the negligence of those in his service is expressed by the legal maxim *qui facit per alium facit per se* (he who does a thing by another must be legally assumed to have done it himself). The master, therefore, is normally liable for the action of his servant by the maxim *respondeat superior*. Even though a particular act by a servant may have amounted to disobedience of instructions, an employer may still, in some circumstances, be held responsible for the results. The employer is usually liable if (a) the relationship of master and servant can be established, and (b) the servant was acting within the scope of his employment, at the time when the accident occurred. A servant is defined by *Salmond on Torts*, 11th Edn., at p. 97, as "any person employed by another to do work for him on the terms that he, the servant, is to be subject to the control and directions of his employer in respect of the manner in which his work is to be done."

It is not always so clear as may be expected whether or not the necessary relationship of master and servant exists, and the differ-

ence between the relationship of master and servant and employer and independent contractor must be understood. A servant is one who is bound to obey any orders given by the master as to the way in which the work shall be done. An independent contractor is one who contracts to do work, by the terms of which he may be subjected to the directions of his employer, but, apart from the contract, he is his own master as to the manner and time in which the work shall be done. The principal rules for determining the relationship of master and servant are embodied in the answers to the following questions—*Dewar v. Tasker & Sons, Ltd.* (1907), 23 T.L.R. 259:

- (a) Who pays the wages?
- (b) Who appoints the servant?
- (c) Who can dismiss the servant?

Once the relationship of master and servant has been established, it only remains to determine whether the act or omission complained of arose within the scope of the employment.

In *Forsyth v. Manchester Corporation* (1912), 29 T.L.R. 15, C.A., an automatic gas meter became out of order, and the infant plaintiff's father requested the local authority to put it right. No one came but, when an inspector was seen in the street, he was asked to look at the meter. He did so but failed to remedy the defect by the use of his pocket knife. He went out to get some tools, and, while he was absent, the infant plaintiff played with the knife (which had been left open) and ran it into his eye. The Court of Appeal held that the duty of the inspector was merely to inspect and report. When he tried to put the meter right, it was nothing more than volunteer kindness; he was not acting within the scope of his authority.

In practice, it is frequently found that servants are lent to another person, in order to perform work. In such circumstances, the responsibility for the results of the servant's negligence depends upon the facts. In *Mersey Docks and Harbour Board v. Coggins and Griffiths (Liverpool), Ltd.* (1947), A.C.I, the House of Lords have laid down that the true test to decide whether the general employer or the hirer is responsible for the acts of the servant is: "whether or no, the hirer had authority to control the manner of the execution of the relevant acts of the servant".

LIABILITY FOR NEGLIGENCE OF CONTRACTORS

An employer is not normally liable for the negligence of an independent contractor or his servants while carrying out his contract. An employer cannot, however, pass on to an in-

dependent contractor any duty the employer is liable to perform by common law or by statute, and he will remain liable for the way in which the contractor performs his duty, even if he does so negligently. But, even in this event, the employer will not be held liable for the casual negligence of the contractor or his servants—*Dalton v. Angus* (1881), 6 App. Cas. 740.

Where a defendant interfered with the work of a contractor, that defendant was held liable because the work for which he thus became personally responsible was not performed in a proper manner—*Burgess v. Gray* (1845), 1.C.B. 578. Where a gas company engaged a contractor and opened a road without lawful authority, consequent upon which the plaintiff fell over a heap of stones and sustained injuries, the defendant gas company was held responsible—*Ellis v. Sheffield Gas Consumers' Co.* (1853), 2 E. & B. 767. If something which is lawful is contracted to be done and it may be attended by injurious consequences, the person who employs the contractor may be responsible, unless he effectually guards against the consequences—*Hughes v. Percival* (1883), 8 App. Cas. 443. The person employing the contractor will not be liable for ordinary negligence on the part of the contractor, however, but only for the consequences of his own failure to take proper precautions in the performance of the work. Where work is performed under a statutory obligation to do that work properly, the party who engages a contractor may be held responsible for its improper completion, as where an opening bridge was constructed which, on completion, would not open, and thus prevented the plaintiff's vessel from proceeding along the river—*Hole v. Sittingbourne and Sheerness Railway Co.* (1861), 6 H. & N. 488.

Balfour v. Barty-King and Another. (*Hyder & Sons (Builders), Ltd., Third Parties*), (1957), 2 W.L.R. 84, which is discussed on p. 32 is a recent example of the principal's liability for the acts of an independent contractor.

PROXIMATE CAUSE AND REMOTENESS OF DAMAGE

A man is responsible to another for damage only where his tortious act or omission is the *proximate* cause of the accident. If there are intervening causes over which the defendant had no control, it is possible to plead that the damage is too "remote". The principle may be illustrated by the well-known case of *Scott v. Shepherd* (1773), 2 Wm. Bl. 892, where the defendant threw a lighted squib from the street into a crowded market house and the squib fell upon a ginger-bread stall. Another person picked

up the lighted squib and threw it away, whereupon it alighted on another stall from which it was picked up and again thrown away, but in the course of the last action the plaintiff was struck in the face. The squib then exploded, and he sustained injuries which resulted in the loss of sight of one eye. It was held that the original tortious act of the defendant was the cause of the accident, and the intermediate acts of the persons who assisted the squib in its progress did not remove the liability from him.

In *Smith v. Davey Paxman & Co. (Colchester), Ltd.* (1943), 1 All E.R. 286, a German aeroplane crashed. A boy collected what proved to be a gunshell as a souvenir. It passed on to several people, to another boy, then to a fitter, then to a tool maker. He gave it to a workmate, and eventually it got into the hands of a maintenance fitter who put it in a drawer shared by a fellow workman. When he emptied his drawer about a week later, curiosity led him to use a hacksaw on the shell. It exploded and caused one death and serious injuries. It was held that the chain of causation was broken by fortuitous interventions; each person who handled the shell was a *novus actor interveniens*.

According to the older cases, it was held that a person could be held liable only for damage which he could, but failed, to prevent and for damage which was the natural and probable consequence thereof. Sir Frederick Pollock, however, says, "The ruling now stands that liability for the consequences of a wrongful or negligent default, once established, is not limited to consequences which might have been reasonably anticipated". This is illustrated by *Polemis v. Furness Withy & Co., Ltd.* (1921), 3 K.B. 560. The circumstances were unusual in that a plank across the end of a hatchway was negligently misplaced and fell into the hold of a vessel; a spark caused by the falling plank ignited petrol vapour and a total loss of the vessel by fire resulted. Notwithstanding the unusual circumstances, there was liability, since the accident was the immediate physical result of the negligent act of the stevedores.

Despite the above, there is no liability if there is *no duty owed* to the injured party, as in *Bourhill v. Young* (1942), 2 All E.R. 396.

PROOF OF NEGLIGENCE

In the ordinary way the mere fact of an accident is not generally *prima facie* evidence of negligence, and if an action is commenced against a person alleged to have caused injury or damage, it is usually for the plaintiff to prove the negligence

alleged. Except where *res ipsa loquitur* or strict liability applies (see below), the absence of such proof will result in the failure of the case.

In *Wakelin v. London and South Western Railway Co.* (1886), 12 App. Cas. 41, the plaintiff failed to prove negligence, and Lord Halsbury in the House of Lords judgment said:

"The evidence appears to me to show that the injuries which caused the death of Henry Wakelin were occasioned by contact with an engine or train belonging to the respondents; and I am willing to assume, although I am by no means satisfied, that it has also been proved that they were in certain respects negligent. The evidence goes no further. It affords ample materials for conjecturing that the death may possibly have been occasioned by that negligence, but it furnishes no data from which an inference can reasonably be drawn that, as a matter of fact, it was so occasioned."

In *Fardon v. Harcourt-Rivington* (1932), 146 L.T. 391, the plaintiff had parked his car in a London street, and as he passed a saloon car (also parked), a large Airedale dog, which had been jumping about and barking in the saloon car, smashed the rear glass panel and a splinter of the broken glass entered the plaintiff's eye. He was taken to hospital and the eye had eventually to be excised. As a result, the plaintiff was unable to continue his duties as a skilled draughtsman. The case reached the House of Lords, where Lord Dunedin, after referring to the fact that *Rylands v. Fletcher* had been mentioned (see p. 26), pointed out that a motor car with a dog inside is not a thing dangerous in itself. His Lordship explained that the event was so unforeseen and unlooked for that no reasonable man could say that a person ought to be convicted of negligence because he did not take precautions against it. Sympathy was expressed by his Lordship to the plaintiff as a man and as a litigant, but since in the circumstances of this particular case nothing amounting to negligence had been proved, the appeal failed and the decision of the Court of Appeal, whereby judgment was entered for the defendant, was upheld.

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RES IPSA LOQUITUR

There are many accidents which occur from causes which should not normally arise in well regulated society, and cases within the maxim *res ipsa loquitur* (the thing speaks for itself) are those where an accident is caused by a physical object under the control of the defendant, in such circumstances that there is a strong presumption that the negligence of the defendant was

responsible for the accident. Nevertheless, it may not be within the power of the plaintiff to show precisely how the accident happened. In such circumstances, the onus is upon the defendant to disprove the negligence alleged. Before this doctrine can be relied upon, however, two conditions must be satisfied, (a) the direct cause and the essential circumstances attending the accident must have been under the sole control of the defendant, and (b) the accident must have been one which does not take place, in the ordinary way, without negligence.

In the "Thetis" submarine disaster case—*Woods v. Duncan and Others* (1946), 62 T.L.R. 283—Lord Simon said "that principle (*res ipsa loquitur*) only shifts the onus of proof, which is adequately met by showing that he was not in fact negligent. He is not to be held liable because he cannot prove exactly how the accident happened."

In *Kearney v. London, Brighton and South Coast Railway Co.* (1871), L.R. 6 Q.B. 759, a passer-by on the highway was injured by a brick which fell from a railway bridge at the time a train was crossing. It was established that other bricks had also fallen from the bridge, a happening which would not have occurred if care had been exercised in its maintenance.

Salmond on Torts, 11th Edn., at p. 516 states:

"There are many cases in which the accident speaks for itself, so that it is sufficient for the plaintiff to prove the accident and nothing more. He is then entitled to have the case submitted to the jury,* and it is for the defendant, if he can, to persuade the jury that the accident arose through no negligence of his. The maxim *res ipsa loquitur* applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused."

ABSOLUTE OR STRICT LIABILITY

Absolute or strict liability is closely connected with the maxim *res ipsa loquitur*. It was held in the leading case of *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330:

"that the person who, for his own purposes, brings on his land, and collects and keeps there, anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape. And upon

* If the case were heard without a jury, then this would be decided by the judge.

authority, this, we think, is established to be the law whether the things so brought be beasts, or water, or filth, or stenches."

Thus, it is clear that there is an absolute or strict liability upon the owner of anything which is inherently dangerous, or which may become dangerous if it escapes. Within this category come accumulations and escapes of water, fire (in some circumstances), gas, electricity, explosives, and dangerous animals.

Collingwood v. Home and Colonial Stores (1936), 3 All E.R. 200, concerned fire damage to adjoining premises caused by electrical wiring and an unsuccessful attempt was made to apply the rule in *Rylands v. Fletcher*. It was held not to apply, since an installation of electrical wiring, whether for domestic purposes or as used by the defendants for the purposes of their trade, was a reasonable and ordinary use of the premises. For the rule to be applicable, the condition of "non-natural" use of the land must be present and there must also be "escape" from the land.

There are exceptions to the rule in *Rylands v. Fletcher (supra)*, namely, where the damage is caused by:

- (a) the injured person's own default;
- (b) an escaping substance which was brought or accumulated upon the defendant's land for the *joint* benefit of himself and the plaintiff, except on proof of negligence of the defendant;
- (c) the wrongful interference of a stranger;
- (d) act of God, or *vis major*.

DEFENCES TO A CHARGE OF NEGLIGENCE

When negligence has been alleged, there are defences (apart from a denial of negligence) which may be sufficient to rebut the charge. As previously shown, the onus of proof of negligence is usually upon the party who makes the allegation, and proof must be forthcoming not only that the defendant was negligent but also that the injury or damage against which complaint is made was proximately caused thereby.

The defences commonly raised are:

1. Contributory negligence. (This is no longer a complete defence.)
2. *Volenti non fit injuria*.
3. Inevitable accident.
4. Act of God.
5. Emergency.
6. Wilful act of a workman.
7. Act of a servant outside the scope of his employment.

8. The plaintiff, at the time of the accident, was a trespasser.
9. Contracting out.
10. Limitation.
11. Accord and satisfaction.

1. Contributory Negligence*

This is no longer a complete defence to a charge of negligence because of the Law Reform (Contributory Negligence) Act, 1945, which provides for the apportionment of blame as between plaintiff and defendant where both parties were negligent.

Where contributory negligence is concerned, *both* the parties have been negligent. Until the passing of the Law Reform (Contributory Negligence) Act, 1945 (see p. 54), a successful defence of contributory negligence resulted in the defendant escaping liability altogether. This statute has materially changed the law on this subject so that where a person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, blame is apportioned and the damages recoverable are reduced to such an extent as the Court thinks just, according to the claimant's share in the responsibility for the damage.

If a person suddenly steps off the pavement, in order to cross the road in sight of an oncoming vehicle, the brakes of which fail to draw it up in time to prevent an accident owing to the proximity of the vehicle (having regard to its speed), then the defence could well be raised. In such circumstances, while the driver may have been negligent in not being able to stop, the plaintiff has also been negligent in such a way that, but for his additional negligence, the accident would have been avoided. This is a case for the apportionment of blame, but in *Eames v. Capps* (1948), 92 S.J. 314, the pedestrian was held to be solely to blame (see p. 187).

2. Volenti Non Fit Injuria

Volenti non fit injuria (no injury is done to a consenting party) is not a common defence, and, when raised, it is often unsuccessful. It has to be established that there was (a) knowledge of the risk, and (b) consent to accept the risk. This defence

* Since blame is now apportioned by virtue of the Law Reform (Contributory Negligence) Act, 1945, it is sometimes said that contributory negligence is no longer a defence at all to a charge of negligence, but can merely be pleaded in mitigation of damages. There can be cases, however, where the other side is wholly to blame.

hardly ever avails as between master and servant. (*Bowater v. Rowley Regis Corp.* (1944), 1 K.B. 476.)

In *Cutler v. United Dairies, Ltd.* (1933), 2 K.B. 297, the defendants' horse and van were left with a chain round one of the wheels while the carman delivered milk. The horse was startled by a noise and bolted. The carman followed and called for help, and the plaintiff, who passed through a fence into a meadow, was asked by the carman to hold the horse's head. He was injured in attempting to do this, and, on appeal, it was held that the plaintiff had voluntarily incurred the risk which caused the accident.

In *Haynes v. Harwood* (1935), 1 K.B. 146, a police constable was injured in stopping the defendant's runaway horses and it was held that the defence of *volenti non fit injuria* was inapplicable if there was an obligation or legal duty to prevent injury or damage.

In *Morgan v. Aylen* (1942), 1 All E.R. 489, the plaintiff was escorting a child: the child was a little way in front of her and began to cross the road in the path of a motor cyclist. The plaintiff ran out to save the child, which was a natural and proper thing to do, and the defendant was in law solely responsible for the accident. The basis of the decision was that the plaintiff had a moral duty to protect the child, and this carried the decision in *Haynes v. Harwood* (*supra*) one stage further.

Volenti does not afford a defence to an action where the defendant has been in breach of a Statutory duty.

3. Inevitable Accident

Accidents occur which, on investigation, can be shown not to have been due to circumstances within the control of either of the parties involved.

In *Fawkes v. Poulson & Son* (1892), 8 T.L.R. 725, it was stated that "the best test of what is an inevitable accident is that given by Dr. Lushington, who said, 'In my opinion, an inevitable accident in point of law is that which the party charged with the offence could not possibly prevent by the exercise of ordinary care, caution and skill'". This defence often arises in accidents caused by latent defect in some part of a vehicle, which defect could not have been discovered despite reasonable inspection and maintenance.

The burden rests upon the defendant to prove that an accident was inevitable. He must either show what was the cause of the accident and that the result of that cause was inevitable, or he must show all the possible causes, one or other of which

produced the effect, and must further show as regards every one of those possible causes that the result could not have been avoided.

4. Act of God

Vis major or an act of God is a direct, violent, sudden and irresistible act of nature which could not by any reasonable care have been foreseen. Within this category come such occurrences as winds, storms, lightning, and earthquake, which arise from natural causes as distinct from inevitable accident. In all instances there must be no negligence established if this defence is to succeed. *Nichols v. Marsland* (1876), 2 Ex.D. 1, was an action arising out of the destruction of bridges by the collapse of dams (holding water in certain artificial lakes) as the result of torrential rain. No negligence in the upkeep of the lakes was proved and it was held that, as the rainfall had been so great, the accident could not reasonably have been foreseen. The accident was due to an "act of God" and the defendants, therefore, were not responsible.

5. Emergency

Where a person, in the agony of the moment, does something which causes injury to another and his act is not an unreasonable one in the circumstances, then he may successfully raise this defence. If a third person places the defendant in a position of emergency, however, and thus causes him to make what amounts to a wrong decision, the person who places the defendant in that position may ultimately be held responsible for the accident.

(Defences (3), (4) and (5) have the common feature that in particular circumstances the defendant's act did not amount to negligence.)

6. Wilful Act of a Workman

This amounts to a denial of negligence on the part of the defendant employer. Before this defence can succeed, the employer must show that the accident was in fact caused by the wilful act of the workman, and that he (the employer) was not guilty of negligence.

7. Servant Acting Outside the Scope of his Instructions and Employment

This defence is illustrated by *Forsyth v. Manchester Corporation* (1912), 29 T.L.R. 15, C.A. (see p. 22). Also, in *Beard v. London General Omnibus Co.* (1900), 2 Q.B. 530, an omnibus

had reached a terminus, and was turned round by the conductor, who, by so doing, was held to have acted outside the scope of his authority. His employers were thus relieved from responsibility for injury caused to the plaintiff by his action.

8. The Defence that at the Time of the Accident the Plaintiff was a Trespasser

A trespasser is entitled to very little consideration. A trespasser has no redress unless he is injured wilfully, for example, by the setting of a man trap or by intentional shooting (see p. 42).

(Defences (6), (7) and (8) are not of general application.

9. Contracting Out

It often happens that a party contracts out of a liability which he would normally bear at common law and if he has done this he will certainly raise this as a defence to any action that may be commenced against him. Sometimes, he may be joined as a defendant with the party from whom he has secured the indemnity, if only because it is not always certain that the contracting out has been done in such a way as to afford him the relief that he sought.

10. Limitation

Actions can be statute-barred, and as a rule the period is three years by reason of the Law Reform (Limitation of Actions, etc.) Act, 1954, so far as regards the type of litigation in respect of bodily injuries with which third party insurers are concerned—see p. 57.

11. Accord and Satisfaction

If a claim has been settled and a valid discharge obtained, it cannot be reopened. If an attempt is made to do so, the binding discharge obtained will be a valid defence.

LIABILITY FOR DAMAGE BY FIRE

At common law there is conflict of authority as to the liability of an occupier for damage by fire which originated on his property. This is, however, of no practical importance because of the provisions of the Fires Prevention (Metropolis) Act, 1774, as below:

“ . . . no action, suit or process whatever shall be had, maintained or prosecuted against any person in whose house, chamber, stable, barn or other building, or on whose estate

any fire shall . . . accidentally begin, nor shall any recompence be made by such person for any damage suffered thereby, any law, usage or custom to the contrary notwithstanding. . . ."

Despite its title, the application of the Act is not limited to the Metropolis—*Filliter v. Phippard* (1847), 11 Q.B. 347. The Statute does not provide any relief if a fire is intentionally kindled and spreads and damages adjoining property, or if a fire is caused by negligence. The Act also does not apply to a case within the rule of *Rylands v. Fletcher* (*supra*).

The position of railways is regulated by the Railway Fires Act, 1905, as amended by the Act of 1923.

Serious damage is at times caused by the use of a blow lamp when, for example, workmen are repairing burst pipes, and it appears that a lighted blow lamp is a dangerous thing *per se* so that the user must use it at his peril. In *Highams v. Stephens* (1930) (unreported), inflammable waste was set alight in a lift well by reason of the improper use of a blow lamp and damage was caused to the extent of £25,000.

Workmen may negligently cause damage in other ways, for instance, in *Doughty v. Waring & Gillow, Ltd.* (1922) (unreported), where a mansion was burnt down by lighting a fire in the fireplace, involving the employer in liability for £30,000. In *Wadsworth & Son, Ltd. v. P. A. Mudd & Co.* (Leeds Assizes, July, 1951) (unreported), a firm of electrical welders were held liable in damages to the extent of £49,000 and costs for a fire caused by the negligence of their servants. The welders were warned to be careful at the mill concerned, but a stub end, discarded from the pliers of a welder, landed on the driving ropes of the machine and caused them to ignite.

In *Balfour v. Barty-King and Another. (Hyder & Sons (Builders), Ltd. Third Parties)* (1957), 2 W.L.R. 84, the defendants were owners and occupiers of a house contiguous to that of the plaintiff. The second defendant employed an independent contractor to thaw frozen pipes. The blow lamp was negligently applied, so that both houses were seriously damaged by fire. Judgment was entered for the plaintiff for £3,140, and for the defendants against the third parties for £5,875. The difference was the cost of repairing the defendants' own premises.

DRIVING ACCIDENTS

Indemnities are provided in the third party department for horse-drawn vehicles and cycles, and the legal liabilities of such road users are similar to those of motorists, except that the Road

Traffic Acts have no application. The general legal principles applicable are those already explained.

The majority of accidents for which there is a liability upon the driver or his employer are due to negligence in the management of the vehicle. The driver may drive recklessly or dangerously, in all the circumstances, by reason of excessive speed, by failure to maintain a proper look-out, by non-observance of the recognised rules of the road, or by omission to give warning of the approach of the vehicle. Liability may otherwise arise because of the vehicle being driven while in a defective condition, by reason of its being left unattended on a public highway, or by failure to take reasonable steps when an accident is imminent.

BAILEES

A bailee is one to whom property is entrusted temporarily, either for payment or otherwise. If a payment is made, he is known as a bailee for reward, but if there is no charge for the bailment, he is termed a gratuitous bailee. The distinction is important because a greater degree of care must be exercised by a bailee for reward; he must exercise due care and diligence in safeguarding the property entrusted to him and (subject to any specific restrictions provided by the contract) he is liable for loss or damage occasioned by his negligence or that of his servants or agents. A gratuitous bailee must observe the same degree of care and diligence in the protection of the bailor's property as he would in relation to his own goods, and if the property is damaged the onus is on the bailor to prove that the bailee has been guilty of *gross* negligence or of a breach of contract.

Goods sent to laundries and to dyers and cleaners are examples of bailment for reward. An instance of gratuitous bailment is the deposit of property at a friend's house, as frequently happened during World War II. Many transactions are based on commercial contract and conditions are often attached either to limit or entirely to absolve the bailee from liability.

In *Alderslade v. Hendon Laundry, Limited* (1945), K.B. 189, the defendant laundry company received from the plaintiff ten handkerchiefs to be laundered for reward. They were not returned and an action was brought to cover the cost of replacement (£2 1s. 5d.) and for damages in respect of clothing coupons (now obsolete). The defendants relied on the terms and conditions of the contract, which limited their liability to twenty times the charge for laundering. They therefore paid into

Court the sum of 11s. 5½d. with a denial of liability. In the County Court it was held that the condition on which the defendants relied was not sufficient to protect them against liability for negligence, but this was reversed on appeal.

The Master of the Rolls explained that where there had been damage or loss and it was sought to limit liability by a clause such as the one on which the laundry relied, if the only liability of the party relying on the clause was a liability for negligence the clause would give protection, but that if the damage or loss could be based on some causes other than negligence the clause would only protect against those other causes, unless the clause covered negligence by express words. If a party to a contract was bound only to use reasonable care in carrying it out, his liability would be only for negligence, and in that event a clause which did not expressly provide for negligence would be sufficient. It follows that the clause has to be worded so as to cover both liability for negligence and for loss or damage from other causes if protection is sought against all types of claims.

In *Davies v. Collins* (1945), 1 All E.R. 217, the facts were that a U.S. Army officer left his Army tunic and trousers with the defendant to be cleaned. The defendant carried on the business of cleaner and repairer of clothes under the style of Collins. The defendant failed to return the goods, and £16 was claimed, being their value in English currency.

The defendant relied on a condition printed on the receipt handed by his representative to the plaintiff when the latter left the clothes. The condition provided that while every care would be exercised, all orders were accepted at owner's risk entirely and liability for loss was limited to ten times the cost of cleaning. The defendant had sub-contracted the work and the learned County Court judge held that in so doing the defendant had dealt with the goods outside the contract altogether. The condition therefore did not apply and the plaintiff was entitled to judgment for the amount claimed. This was upheld by the Court of Appeal. In this case, the words in the condition "every care is exercised in cleaning" must refer to cleaning by the defendant himself or by his own staff. He could not exercise care over the work of sub-contractors.

PUBLIC AUTHORITIES

Public authorities (which expression includes local authorities) responsible for roads in their areas, are in the same position at common law as ordinary individuals in so far as they may be held responsible for the consequences of the negligent acts of

their servants (misfeasance). A public authority, however, is in a favoured position in connection with accidents by reason of non-feasance (or the omission to repair), in so far as this may relate to highways. In other words, while such an authority is responsible for the results of work improperly carried out, no liability attaches for accidents caused by the omission to repair highways. This protection does not extend to buildings or other structures for which public authorities are responsible. It has been held, however, that a bridge may form part of the highway (*Picton Municipality v. Geldert* (1893), A.C. 524, P.C.), but sewers do not (*White v. Hindley Local Board* (1875), L.R. 10 Q.B. 219). Liability for tramway undertakings is regulated by the Tramways Act, 1870, and by this Act liability for the maintenance of the tram track and eighteen inches on each side thereof is imposed.

COMMON CARRIERS

In the absence of a specific contract to the contrary, a common carrier has a strict liability at common law for the safety of goods entrusted to him. He is not responsible, however, for loss or damage caused by the Queen's enemies, an act of God, negligence of the customer (e.g., defective packing), or inherent vice.

A common carrier was defined in *Watkins v. Cottell* (1916), 1 K.B. 10, as follows:

“a person who undertakes for hire to transport from a place within or without the realm to a place within or without the realm, the goods or possessions of all such as choose to employ him; a person who is ready to engage in the transportation of goods as a business and not as a mere casual occupation *pro hac vice*. A man who does not ply regularly for hire to a particular destination, but lets out his vehicle by the day or by the job to go to any destination ordered by the hirer, is not a common carrier.”

The strict liability was modified to some extent by the Carriers Act, 1830, and, so far as concerns valuables, the customer must declare all items of greater value than £10 and must pay the appropriate scale charge, when the strict liability remains unaffected.

Railways are common carriers of goods and their position has been altered by the Railway and Canal Traffic Acts, 1854-1894, the Regulation of Railways Acts, 1840-1893, and the Railways Act, 1921. The last Act increased the limit in the Carriers Act, 1830, to £25. Nowadays carriers usually operate under special conditions of carriage and such conditions govern their liabilities.

INNKEEPERS

An innkeeper, like a common carrier, has strict liability at common law for the safety of his guests' effects unless the loss is occasioned by an act of God, by the Queen's enemies, by the misconduct or negligence of the guest, or by the guest taking upon himself the task of protecting his own property.

This onerous liability is modified by the Hotel Proprietors Act, 1956, which uses the modern term "hotel" and defines an "hotel", for the purposes of the Act, as:

"an establishment held out by the proprietor as offering food, drink and, if so required, sleeping accommodation, without special contract, to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received."

The Act limits the hotel proprietor's liability as an innkeeper to £50 for any one article and to £100 in the aggregate for the property of any one guest, provided a Notice, as set out in the Schedule to the Act, printed in plain type, is conspicuously displayed in a place where it can conveniently be read by guests at or near the reception office or desk or, where there is no reception office or desk, at or near the main entrance to the hotel.

This limitation does not apply, however, where:

- (a) the property is stolen, lost or damaged through the default, neglect or wilful act of the proprietor or some servant of his; or
- (b) the property was deposited by or on behalf of the guest expressly for safe custody, and, if so required by the proprietor or his servant, in a container fastened or sealed by the depositor; or
- (c) at a time after the guest had arrived either the property was offered for deposit and refused or the guest or some other guest acting for him wished to offer the property for deposit but was unable to do so through the default of the proprietor or a servant of his.

The special liability as an innkeeper, moreover, applies only to a "traveller" and where:

- (a) at the time of the loss or damage sleeping accommodation had been engaged for the traveller; and
- (b) the loss or damage occurred during the period commencing with the midnight immediately preceding, and ending with the midnight immediately following, a period for which the traveller was a guest at the hotel and entitled to use the accommodation so engaged.

An hotel proprietor is not liable as an innkeeper for loss or damage to any vehicle or any property left therein or any horse or other live animal or its harness or other equipment. There may be liability on grounds of negligence.

The Act has made it clear that an innkeeper's liability applies to damage as well as to loss of guests' property.

LIABILITY TO SCHOLARS

It is recognised that a greater degree of care is necessary in dealing with children than with adults. It often happens that circumstances which may not amount to negligence where older people are concerned indicate negligence if children are involved, in a sufficient degree to impose liability for any accidents which may result. This principle has been confirmed by the Courts on numerous occasions and is cited in the Occupiers' Liability Act, 1957, Sect. 2 (3) (a). A schoolmaster is not merely *in loco parentis*; his duty is that of a *careful* parent. In practice, cases now frequently come before the Courts where the standard of care imposed on education authorities is higher than that exercised by many parents in looking after their own children.

The case of *Ching v. Surrey County Council* (1910), 26 T.L.R. 355, created a demand for scholars' indemnities. The plaintiff was a scholar at a public elementary school. At the time of the accident, he was being pursued by another pupil in the school playground when he caught his foot in a hole in the asphalt paving, which caused him to fall and break his arm. Damages were claimed from the County Council and were awarded, on the grounds that they were responsible for the maintenance of the school and the keeping of the premises safe for the use of pupils.

Since that time, many other cases have been heard and three of them are noted below.

In *Wray v. Essex County Council* (1936), 3 All E.R. 97, a boy of thirteen at a school owned by the defendants was told by a master to carry an oil can with a six-inch spout to another part of the building. No directions were given to him as to the way in which to hold it. He carried it with the spout pointing forward, and, when rounding a blind corner, he collided with another boy. The latter's eye was penetrated by the spout and the sight destroyed. The learned County Court judge dismissed the plaintiff's claim, holding that there was no duty on the master as a reasonable man to give the boy any special instructions how to hold the can and that the can was not a thing dangerous in itself. This decision was upheld, on appeal.

Accidents often occur during games. In *Ricketts v. Erith*

Borough Council and Another (1943), 2 All E.R. 629, the children were allowed to play in the playground during the midday break, and while there was no continuous supervision, one of the teachers would go into the playground from time to time to see that all was well. The children, if given permission, could leave the playground to go home for lunch or to buy sweets or toys. On the day of the accident, a boy aged ten went to a nearby shop and purchased some blunted pieces of bamboo made in the form of a bow and arrow. On his return to the playground he discharged the arrow which splintered the infant plaintiff's spectacles and necessitated the excision of an eye. An action was brought against the Erith Borough Council on the ground of negligence by reason of inadequate supervision of the pupils and against the owner of the shop who was alleged to have been negligent in selling to an infant of apparent age articles which he knew, or ought to have known, would be dangerous in his hands. It was held that it was not incumbent upon the council to have a teacher continuously present in the yard and that the bow and arrow was not in itself a dangerous thing; hence, judgment was given for the defendants with costs.

The House of Lords decision in *Lewis v. Carmarthenshire County Council* (1955), 1 All E.R. 565, illustrates the high duty required of Authorities where children of tender years are concerned. A child aged four, at a nursery school, was ready to go out for a walk and was left with another child in the classroom for a short period. The child left the room and ran on to the highway. This caused a driver to swerve violently; he struck a telegraph post, and was killed. The driver's widow succeeded in her claim against the county council because if a young child is allowed to stray into a busy street, it should be foreseen not only that the child may be injured but also other road users. The county council was in breach of the duty of care owed to the deceased, since precautions had not been taken.

OWNERS AND OCCUPIERS OF PROPERTY

Generally, the occupier and not the owner is responsible for accidents caused by defects in premises. This is because *control* is a fundamental consideration.

The subject can be considered under the following headings:

1. Common Law Liability—

- (a) of an owner }
 - (b) of an occupier }
- in each instance—
- (i) to persons off the premises;
 - (ii) to persons on the premises.

2. Statutory Liability—

- (a) The Metropolitan Water Board Acts, 1907 and 1932.
- (b) The Housing Act, 1957.

COMMON LAW LIABILITY

(a) (i) Of an Owner to Persons off the Premises

The owner may find himself liable to compensate passers-by who suffer loss by reason of a defect, if it can be held to constitute a legal nuisance. In *Wringe v. Cohen* (1940), 1 K.B. 229, adjoining premises were damaged through lack of repair of the defendant's premises, and the property owner was held liable in damages because of his common law duty to prevent his premises becoming a nuisance.

Wilchick v. Marks and Silverstone (1934), 2 K.B. 56, concerned an accident to a passer-by where both the owners and the occupiers knew of the defect and none of these was under any contractual liability to effect repairs. Judgment was in the circumstances given against all defendants.

In *Mint and Another v. Good* (1950), 2 All E.R. 1159, doubt was expressed whether a landlord could exempt himself from liability for accidents to passers-by by taking a covenant from his tenant to repair a structure adjoining the highway. If the owner lets premises known to him to be dangerous, without taking a covenant from the tenant to repair them, he may be liable for accidents to owners of adjoining property and to passers-by.

(a) (ii) Of an Owner to Persons on the Premises

A Part of Premises Retained Under Control. Where the owner retains a portion of the premises under his own control, such as a staircase, outside steps, the roof or any other portion, he will be liable for accidents occasioned by defects in those portions, as though he were the occupier. The terms of the letting often do not make it clear whether, say, steps have been let to one or other of the tenants or whether the owner of the premises remains the "occupier" of the steps.

Sect. 3 (4) of the Occupiers' Liability Act, 1957, extends the owner's liability, for in circumstances where part of the premises is retained by the landlord, he owes the common duty of care (see p. 61) and any higher obligation under the lease or tenancy agreement to all visitors. Previously, visitors other than the tenant were merely the owner's licensees as illustrated by *Fairman v. Perpetual Investment Building Society* (1923), A.C. 74, which is no longer good law.

An Undertaking to Repair. Where the owner has undertaken to keep the premises in repair, he will be liable to the tenant for bodily injuries or damage to his property caused by a defect in the premises on the grounds of breach of contract, provided that the owner has been given notice of the existence of the defect. The owner now has the same duty of care towards his tenant's lawful visitors as if he himself were the occupier—Sect. 4, Occupiers' Liability Act, 1957.

When premises are let to a tenant, there is usually no implied warranty that the premises are fit for the purpose for which they are intended, and it is for the tenant to satisfy himself that the premises are in a satisfactory state. The owner, however, would be liable if he induced the tenant to take the premises by fraud, or where he had specifically warranted the premises to be fit for a particular purpose.

(b) (i) Of an Occupier to Persons off the Premises

Liability to persons off the premises, namely, passers-by, is usually determined on the grounds of nuisance and if the premises become dangerous to persons passing by, the occupier (if he is responsible for their upkeep)—and sometimes the owner as well—will be answerable for the consequences of the dangerous state. The occupier, in such circumstances, has a duty to take reasonable care to protect passers-by from injury from the premises and liability may arise if anything is done to the premises rendering them unsafe, if a known temporary defect is not repaired, or if a permanent defect remains unrepaired and is such that the occupier ought to have known of its existence. Thus, there will usually be a liability for defective gratings, coal chutes, unfenced areas, or for portions of the premises, including coping stones, chimney pots, slates or tiles, which fall upon the highway and thus cause injury to passers-by. If, however, the accident is not the reasonable and probable consequence of the defect, or the defect is in part of the premises used as a highway and is the result of the ordinary wear and tear of such use, liability may usually be avoided.

(b) (ii) Of an Occupier to Persons on the Premises

The liability at common law of an occupier to such persons is best discussed by enquiry into the relative liabilities towards various classes of persons, as set out below, and the legal position before and after the passing of the Occupiers' Liability Act, 1957, is indicated. The Act is studied separately on p. 61.

(i) The Contractee

Contractees enter premises under contract, which may be ex-

press or implied. In *Maclenan v. Segar* (1917), 2 K.B. 325, a visitor to an inn was injured when a fire broke out during the night. It was held that an innkeeper warrants that the premises are safe and fit for use as an inn. Where there are contractual relations, the duty of the occupier is still dependent on the terms of the contract, but the 1957 Act provides that if no special provision as to the duty of care be made applicable by the contract, then the obligation is to be the common duty of care.

(ii) The Invitee

Invitees are any persons coming upon the premises by invitation, express or implied, and include:

- (a) persons paying for admission to buildings, such as hotels, theatres, cinemas and grandstands;*
- (b) persons entering premises on business, for example, customers or persons who may have other business to transact with the occupier;
- (c) persons visiting the premises on their employer's business, such as for the collection or delivery of goods, testing gas appliances, or for the purpose of performing work on the premises for the occupier; and
- (d) persons other than the above having lawful occasion to visit the premises, such as a scholar at a school.

To such persons the occupier owes a duty to guard them from unusual danger and the position is "that he, using reasonable care on his own part for his safety, is entitled to expect that the occupier shall, on his part, use reasonable care to prevent damage from unusual danger, which he knows or ought to know; and that where there is evidence of neglect, the question whether such reasonable care has been taken by notice, lighting, guarding or otherwise, and whether there was contributory negligence by the sufferer must be determined by the judge or jury as a matter of fact"—*Indermaur v. Dames* (1867), L.R.I.C.P. 274.

The 1957 Act has altered this by providing that the duty owed to an invitee is the common duty of care. The test is whether the visitor will be reasonably safe in using the premises for the purposes concerned, dependent on a duty to take reasonable care on the part of the occupier.

There are exceptions to the rule that in such circumstances the occupier will be liable for accidents through defects in buildings. If the injured person was aware of the defect, but volun-

* Persons in this category may have the status of contractees, and, if so, the duty owed will be governed by the terms of the contract, if there is a specific contract in existence.

tarily undertook the risk of accident, or if the occupier put up a notice giving warning and the warning was ignored, the occupier will not be liable, nor will the occupier be responsible for accidents where the visitor to the premises has failed to take reasonable care.

(iii) The Licensee

Licensees are persons who come on the premises merely by the permission of the occupier, whether express or implied, and they include visitors and guests who make no payment for their entertainment. The duty to such a person used to be less than that owed to invitees, and he had to take the premises as he found them.

Now, however, the distinction between an invitee and a licensee has disappeared, and the 1957 Act imposes the common duty of care. This will probably mean that the former licensee will be in a better position than formerly and that liability will approximate to that previously owed to an invitee.

(iv) The Person Who Enters By Law

In these days many officials enter premises for various purposes, and there are also persons who enter public buildings to be considered. In the past the decisions as to their legal position have varied, but the 1957 Act imposes the common duty of care, whether or not they, in fact, have the occupier's permission to be there.

(v) A Special Category

A person who enters premises in exercise of rights conferred by virtue of an access agreement or order under the National Parks and Access to the Countryside Act, 1949, has always been in a special category and the 1957 Act makes no alteration. Any such person is not, for the purposes of the 1957 Act, a visitor to the occupier of the premises concerned.

(vi) The Trespasser

A trespasser has no right to be on the premises. The lowest duty of all is owed to him, and the 1957 Act makes no alteration. He must take the premises as he finds them, and the only obligation on the part of the occupier is not to injure him wilfully. He must not be shot and it is not permissible to lay a man trap and thereby to cause him injury.

STATUTORY LIABILITY

(a) Metropolitan Water Board Acts, 1907 and 1932

The liability under these Acts is considered in the next chapter, which deals with statutory liabilities generally—see p. 46.

(b) Housing Act, 1957

The Housing Act, 1957, imposes an obligation on the owners of small houses, and this liability is discussed on p. 59.

DIPLOMATIC IMMUNITY

Diplomatic immunity concerns ambassadors and the embassy staffs who are not liable during their tenure of office for torts committed by them, but they are subject to the jurisdiction of the Courts on recall. There is similar immunity extended to the United Nations Organisation and persons connected therewith by the Diplomatic Privileges (Extension) Act, 1946. Foreign sovereigns have never been liable for torts. The Diplomatic Immunities Restriction Act, 1955, enables Her Majesty by Order in Council to withdraw personal diplomatic immunities from members of the diplomatic missions of certain foreign sovereign powers and their families.

This privilege is often waived on grounds of justice. Third party insurance is usually effected in the usual way and insurers do not take advantage of this immunity.

LEGAL AID

The Poor Persons' Procedure, which provided for poor litigants free legal aid in the bringing or defence of legal actions, was terminated when a wider scheme became operative under the Legal Aid and Advice Act, 1949. Legal aid covers the type of litigation with which third party insurers are concerned, and the facilities now available encourage injured third parties to commence actions for damages.

Those who take advantage of the scheme are termed "assisted persons" and practising solicitors and counsel join legal aid panels set up by the Law Society. The litigant can select his solicitor from the panel of the area in which the "legal aid" certificate is issued, and he has the same choice of counsel although normally he is guided by his solicitor.

Legal aid is available under the Act and relevant Regulations for any person with a disposable income of £420 per annum, but since disposable income refers to gross income less certain deductions, a disposable income may be equivalent to some £750 per annum. There is no upper limit for capital, but persons do not usually receive the benefit of legal aid if they have more than £500 disposable capital.

The Act has not yet been fully implemented to include advice as well as aid, but by the County Courts Act, 1955, the legal aid

provisions now extend to actions in the County Court. Previously, the scheme applied only to High Court actions.

It is necessary for the applicant for legal aid to establish that he has reasonable grounds for taking, defending or being a party to proceedings in respect of which such legal aid is sought. The application may be refused, but certificates are at times issued which cause outspoken remarks to be made by judges because the plaintiff's case cannot be made out. Legal aid is free only for a small proportion of those entitled to the benefit of the Act; the others are required to pay a contribution towards costs to the Law Society.

CHAPTER IV

LEGAL PRINCIPLES OF THIRD PARTY INSURANCE (II)

In this chapter the principal statutes which have a *general* bearing on third party insurance are studied. Certain special features such as the responsibilities of hotel proprietors and carriers were studied in the last preceding chapter.

If a statute creates a civil liability, then this exists irrespective of negligence, and in such circumstances the claimant has only to establish breach of the statute in order to found a civil claim, for example, a breach of statutory duty under the Factories Acts, 1937-48.

FATAL ACCIDENTS ACTS, 1846-1908

The **Fatal Accidents Act**, 1846 (otherwise known as Lord Campbell's Act), provides that where the death of a person was caused by wrongful act, neglect, or default in circumstances which would have entitled that person (had death not ensued) to maintain an action for the recovery of damages, the right of action against the responsible party vests in the executor or administrator of the deceased. Recovery of damages, however, is limited by reason of case law to financial loss on the part of certain dependants,* and the action formerly had to be commenced within twelve calendar months—now three years, see p. 58 of the death. Before the passing of this Act, which gave a measure of relief to dependants, all right of action was lost on death because of the maxim *actio personalis moritur cum persona* and this remained the law where the party *responsible for an accident* died, until the passing of the Law Reform (Miscellaneous Provisions) Act, 1934. In fatal accident cases actions are often brought under the Fatal Accidents Act for the benefit of dependants in respect of financial loss and also for damages for loss of expectation of life under the Law Reform (Miscellaneous Provisions) Act, 1934, see p. 50.

* The list of dependants has been extended to include illegitimate and adopted relations by the Law Reform (Miscellaneous Provisions) Act, 1934, and this Act provides for damages to be awarded in respect of funeral expenses of the deceased if such expenses were incurred by the parties for whose benefit the action is brought (see p. 47).

The **Fatal Accidents Amendment Act**, 1864, relates to cases intended and provided for by the above Act, where the executor or administrator has not brought an action within six months of the death and it also applies to any case where there is no executor or administrator to commence proceedings. In such circumstances, the action may be brought by and in the name(s) of the person(s) for whose benefit the Act was designed.

The **Fatal Accidents (Damages) Act**, 1908, provides that "in assessing damages . . . there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance." It follows that if, for example, a deceased person was insured under a personal accident policy, any sum so payable must not be taken into consideration so as to reduce the damages recoverable (for the benefit of his estate or of his dependants) from a person whose negligence was the cause of the death.

THE METROPOLITAN WATER BOARD ACTS, 1907 AND 1932

Under the Metropolitan Water Board (Charges) Act, 1907, a liability was imposed upon owners and occupiers of property within the area of the Board, so that they were responsible for communication pipes and apparatus connected thereto. Under the Metropolitan Water Board Act, 1932, however, the Board is now responsible for the communication pipe, as defined in the Act. This definition (Sect. 2) is as follows:

"'Communication pipe' means so much of any service pipe as extends from a service main of the Board to—
 (a) the stopcock (if any)* fitted on such pipe; or
 (b) where a stopcock is not fitted on such pipe the point at which such pipe passes the boundary of the street or the point at which such pipe enters any premises in or under the street whichever of those points is the nearer to the service main;

as the case may be and includes the ferrule at the junction of such pipe with such service main and any such stopcock together with the box (if any) containing the same and any cover to such box."

While the Board takes over the communication pipe (as defined above) and stopcock, the length of pipe from the stopcock to the boundary of the street becomes part of the supply

* i.e., in the street.

pipe and the responsibility of the consumer. The statutory stopcock is the property of the Board, and the box (if any) containing the stopcock and any cover to such box likewise belong to the Board.

No general rule is applicable to premises outside the area of the Metropolitan Water Board. Most water authorities operate under Statutory powers and it is therefore necessary to know the provisions covering the area concerned.

THIRD PARTIES (RIGHTS AGAINST INSURERS)

ACT, 1930

This statute is designed to protect the interests of third parties who may have cause to make claims against insolvent persons. Section I of the Act, for example, provides that where a person under any contract of insurance is covered against liability to third parties and any such liability is incurred, either before or after the insured has become bankrupt or made a composition or arrangement with his creditors, then his rights against the insurers in respect of that liability are transferred to the third party to whom the liability was incurred. If the assured happens to be a company, then similar considerations apply in the event of a winding-up order being made or the appointment of a receiver or manager of the company's business. Corresponding modifications are incorporated in the Act (Section I (2)) where an order is made under the Bankruptcy Act, 1914, for the administration of the estate of a deceased debtor.

Provision is also made for the treatment of those cases (Section I (4)) where the liability of the insurer to the insured exceeds or is less than the liability of the insured to the third party.

The text of this statute is given in Appendix I.

LAW REFORM (MISCELLANEOUS PROVISIONS)

ACT, 1934

According to the preamble of this statute, it is "An Act to amend the law as to the effect of death in relation to causes of action and as to the awarding of interest in civil proceedings." The three main sections deal respectively with the following diverse subjects:

Section 1: The effect of death on certain causes of action by reason of the legal maxim *actio personalis moritur cum persona*.

Section 2: Amendment of the Fatal Accidents Acts, 1846-1908.

Section 3: The enlargement of the power of Courts of Record to award interest on debts and damages.

Section 1. Effect of death on certain causes of action

The common law maxim *actio personalis moritur cum persona** (a personal action dies with the person) meant that the right of action for tort was ended by the death of either party, even if an action had been commenced in his lifetime. The practical effect was that if an injured third party died before judgment, no loss fell on the policy except in so far as any claim was competent under the Fatal Accidents Acts; if the insured defendant died before judgment, no loss similarly fell on the policy. This involved considerable hardship, particularly in a growing number of road accident fatalities (because no claim could be made against the representatives of a deceased motorist) and Sub-section (1) made a far-reaching alteration, as may be seen from the extract below:

“Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate.”†

This has had an important bearing upon third party indemnities, for since death no longer puts an end to an action for damages, the liability of an insured is continued in his personal representatives. A new clause was therefore inserted in all policies after the passing of the Act to indemnify the personal representatives of an insured in the terms of the policy in respect of the liability incurred by him.

The legal personal representatives of a deceased third party can likewise commence an action for the benefit of his estate where the death was caused by negligence. This is separate and distinct from a claim under the Fatal Accidents Acts, 1846-1908,

* The origin of this inequitable principle in English law is obscure. It has been suggested that it was in the first instance a mistranslation of *actio penalisa moritur cum persona* (a criminal action dies with the person) —*Hambly v. Trott* (1776), 1 Cowp. 371. It has never had any place in Scots law.

† This does not apply to defamations and other causes of action not relevant to the present consideration.

for financial loss sustained by dependants. This is, in fact, what happened in the motor case of *Rose v. Ford* (1937), A.C. 826 (*infra*).

Exemplary Damages. Where a cause of action survives for the benefit of the estate of a deceased person, the damages (Section 1 (2) (a)) shall not include exemplary damages. This could hardly apply to a third party claim. By way of explanation, a passage from "Halsbury" is given as a footnote.*

Loss or Gain to the Estate. According to Sub-section (2) (c), where a cause of action survives for the benefit of the deceased's estate and the death has been caused by the act or omission which gives rise to the cause of action, the damages recoverable shall be calculated without reference to any loss or gain to the estate consequent on the death "except that a sum in respect of funeral expenses may be included." An example of "loss" would be the cessation of the deceased's earned income, while an illustration of "gain" would be the sum payable under a contract of assurance. (This is similar to the provisions of the Fatal Accidents (Damages) Act, 1908.)

Time Limits. Sub-section (3) provides that no proceedings shall be maintainable in respect of a cause of action in tort which has survived against the estate of a deceased person unless either:

- (a) proceedings against him in respect of that cause of action were pending at the time of his death; or
- (b) *the cause of action arose not earlier than six months before his death and*† *proceedings are taken in respect thereof not later than six months after his personal representative took out representation.*

Damage After Death. Sub-section (4) is primarily concerned with damage sustained after the death of the tortfeasor. A possible illustration is the leaving of a vehicle on a hill with insufficient precautions to prevent it running away, after which the driver dies and then the vehicle runs away with resultant injuries to a third party. It is provided that in such circumstances the cause of action which would have subsisted if the

* "Where the wounded feeling and injured pride of a plaintiff, or the misconduct of a defendant, may be taken into consideration, the principle *restitutio in integrum* no longer applies. Damages are then awarded not merely to recompense the plaintiff for the loss he has sustained by reason of the defendant's wrongful act, but to punish the defendant in an exemplary manner, and vindicate the distinction between a wilful and an innocent wrongdoer." (Vol. II, 223).

† The passage italicised has been repealed by the Law Reform (Limitation of Actions, etc.) Act, 1954 (see p. 57).

driver had died after the damage had been suffered shall be deemed to have been subsisting before his death.

According to Sub-section (6), in the event of the insolvency of an estate against which proceedings are maintainable under Section 1 any liability in respect of the cause of action in respect of which the proceedings are maintainable is to be deemed a debt provable in the administration of the estate although it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

Section 2. Amendment of the Fatal Accidents Acts, 1846-1908

This Section provides that for the purposes of the Fatal Accidents Acts, 1846 to 1908, a person shall be deemed to be the parent or child of the deceased notwithstanding that he was only related to him (1) illegitimately or (2) in consequence of adoption, provided the adoption was legal and in accordance with certain statutory provisions.

The effect of this Section, therefore, is to add to the list of dependants under the Acts concerned.

Before the passing of this Act damages awarded under the Fatal Accidents Acts could not take into account any funeral expenses of the deceased. This is altered by Sub-section (3) which provides that in an action brought under the Acts "damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought."

Section 3. Interest on debts and damages

This Section has considerably enlarged the discretion of the Court as regards the awarding of interest on a debt and has introduced a new feature—the power to award interest on damages.

The text of this Act is given in Appendix II, to which the student should refer for further particulars.

LOSS OF EXPECTATION OF LIFE

Since the case of *Flint v. Lovell* (1935), 1 K.B. 354, damages for loss of expectation of life have been claimed under a separate heading. In that case, the plaintiff, a man of some seventy years, was awarded damages of £4,000 on the grounds that he had suffered "loss of the prospect of enjoyable, vigorous and happy old age" which had been replaced "by a precarious tenure not likely to exceed twelve months." Before this, a plaintiff who claimed general damages had included in that

claim every element of loss, pain, and suffering which his injury might bring him in the future.

Then came the leading case of *Rose v. Ford* (*supra*). The facts were that a young woman aged 23 was injured on 4th August, 1934, on 6th August the right leg was amputated, and on 8th August she died, having been in a state of coma throughout. On appeal, the House of Lords upheld the award of £20 for four days' pain and suffering and a nominal sum of £2 for loss of the leg, in addition to £300 awarded under the Fatal Accidents Act. As regards loss of expectation of life, the decision in *Flint v. Lovell* (*supra*) was upheld and the assessment of the Court of Appeal of £1,000 was accepted by the House of Lords. It is interesting to note that Lord Atkin stated, "The Court of Appeal held that if a person suffered personal injuries from negligence there could be included in the estimate of damages consideration of the fact that by wrongful injury his normal expectation of life had been shortened. This decision seems to me simple and inevitable, and *I am satisfied that it has always been a usual element in assessment of damages in such cases.*" It is now settled law that the right of an injured person to damages for loss of expectation of life passes to that person's legal personal representative(s). This decision proved very costly to motor insurers in the years immediately following, when various actions were brought for damages in respect of loss of expectation of life, sometimes where young children were killed in road accidents, and large sums awarded. In 1941, however, the position was reviewed by the House of Lords in the case of *Benham v. Gambling* (1941), A.C. 157, which concerned the death of a child aged 2½ years. The damages were reduced from £1,200 to £200. The following is a passage from the judgment of the Lord Chancellor:

"The question thus resolves itself into that of fixing a reasonable figure to be paid by way of damages for the loss of a measure of prospective happiness . . . before damages are awarded in respect of the shortened life of a given individual under this head, it is necessary for the Court to be satisfied that the circumstances of the individual life were calculated to lead, on balance, to a positive measure of happiness, of which the victim has been deprived by the defendant's negligence. If the character or habits of the individual were calculated to lead him to a future of unhappiness or despondency, that would be a circumstance justifying a smaller award . . . the compensation is not being given to the person who was injured at all, for the

person who was injured is dead. The truth, of course, is that in putting a money value on the prospective balance of happiness in years that the deceased might otherwise have lived, the jury or judge in fact is attempting to equate incommensurables. Damages which would be proper for a disabling injury may well be much greater than for deprivation of life. These considerations lead me to the conclusion that in assessing damages under this head, whether in the case of a child or an adult, very moderate figures should be chosen."

To-day, there is no reported case where more than £500 is awarded for loss of expectation of life. In *Garcia v. Harland and Wolff* (1943), 2 All E.R. 477, this was, in fact, the amount recovered, together with funeral expenses, by a widow, and the following is an extract from the judgment:

"Life is deemed by the law to be our most precious asset. The deceased was a workman who had reached the age of 27. He had settled prospects, good health, valuable industrial knowledge of an expert worker; he had a wife and they were very happy together and they had two small boys. I have here to deal with a case where really the maximum damages that could ever properly be given should be given—that if ever anyone had the prospect of future happiness, this man had everything which would tend to it. Large damages ought not to be given in such cases."

In the case of *Rose v. Ford* (*supra*), Rose, as administrator of his daughter's estate, claimed damages under the Fatal Accidents Acts, 1846 to 1908, for the benefit of himself and his wife in respect of financial loss occasioned by the death of their daughter, and he also claimed damages on behalf of his daughter's estate. Where the parties who will benefit from damages awarded under the Fatal Accidents Acts are the same as those who will benefit from damages awarded under the Law Reform Act, the damages under the Fatal Accidents Acts must be reduced by the amount which is given under the Law Reform Act. This duplication of damages was considered in *Ellis v. Raine* (1939), 2 K.B. 180.

In *Morgan v. Scoulding* (1938), 1 K.B. 786, damages for loss of expectation of life were awarded, although this was a case of what would ordinarily be termed "instantaneous death." It was held that the injury occurred before the death, although

there might only have been a split second between the accident and the death.

From the foregoing, it will be seen that fatal cases now involve claims in respect of the following:

- (a) Special damages to the date of death.
- (b) Funeral expenses.
- (c) General damages for pain and suffering to the date of death.
- (d) Damages for loss of expectation of life.
- (e) Damages under the Fatal Accidents Acts.

Most of the cases arise out of motor accidents, but the same principles apply to third party claims generally.

LAW REFORM (MARRIED WOMEN AND TORTFEASORS) ACT, 1935

This Act amended the law relating to (1) the capacity, property and liabilities of married women, and the liabilities of husbands, and (2) proceedings against, and contribution between, tortfeasors.

Part I gives to a married woman complete freedom with regard to her own property and she can sue or be sued as *feme sole*. It also abolishes a husband's liability for his wife's torts and ante-nuptial contracts, debts, and obligations.

Part II deals with the position where any person has suffered damage through a tort. It provides that a person who recovers judgment against one person who has committed a tort may bring proceedings against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage. It also provides that if more than one action is brought in respect of the same damage, the sums awarded in the various actions shall not exceed in the aggregate the amount of the damages awarded in the first judgment given. The plaintiff in the second or any subsequent action may be deprived of costs of such action, unless the Court considers there was reasonable ground for bringing the action. It also provides that any tortfeasor liable in respect of damage may recover contribution from any other tortfeasor who is, or would, if sued, have been liable in respect of that damage.

The 1935 Act does not alter the common law rule that husband and wife cannot sue one another for a tort. The Married Women's Property Act, 1882, Sect. 12, however, gives a married woman the same civil remedies for the protection of her separate estate as if it belonged to her as a *feme sole*, and "property" includes a thing in action. In *Gottliefe v. Edelston*

(1930), 2 K.B. 378, a spinster was injured in a car accident and before the case was heard she married the driver of the car. It was held that the claim was barred because her right of action was not such a thing in action as would become her separate property. This decision, however, was overruled by the Court of Appeal in *Curtis v. Wilcox* (1948), 2 K.B. 474, in which the facts were similar; the parties were married ten days after delivery of the statement of claim. The plaintiff's claim was a thing in action which was her separate property belonging to her on marriage, hence she was entitled to succeed against the defendant.

LAW REFORM (CONTRIBUTORY NEGLIGENCE) ACT, 1945

At common law there is no provision for the apportionment* of blame as between plaintiff and defendant, but by Section I of this Act:

"Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

This brings the common law into line with the provisions of the Maritime Conventions Act, 1911, so that contributory negligence is no longer a complete answer to a charge of negligence. The effect of the Act is, of course, not limited to third party claims, although it was passed primarily because of the obvious injustice in the many road accidents of modern times where both parties are to some extent to blame. Whether or not the alteration has increased litigation is problematical, for the many claims settled out of Court are almost always negotiated in accordance with the essential principle embodied in the Act, namely, compromise because both the parties have to some extent been guilty of negligence.

Total Damages to be Recorded

Where the damages are reduced, for example, because one party was 40 per cent. to blame and the other 60 per cent. to

* Apportionment of blame between *defendants* was made possible by the passing of the Law Reform (Married Women and Tortfeasors) Act, 1935, while apportionment of blame between *plaintiff* and *defendant* is now similarly possible by reason of the Law Reform (Contributory Negligence) Act, 1945.

blame, it is required that the Court shall find and record the total damages which would have been recoverable if the claimant had not been at fault. This is a useful provision, for it ensures that the total damages otherwise recoverable are not lost to view, in these days when awards are made on increasingly generous scales, and it prevents the Court of Appeal having to send cases back for assessment.

Contractual Liabilities

The foregoing provisions do not operate to defeat any defence arising under a contract. Moreover, if in any contract or enactment there is provision for limitation of liability, the damages recoverable are not to exceed the maximum limit applicable.

Fatal Accident Claims

In any fatal accident where an action is brought for the benefit of the deceased's estate under the Law Reform (Miscellaneous Provisions) Act, 1934, and the damages recoverable are reduced because of the apportionment of blame, then any damages recoverable for the benefit of defendants under the Fatal Accidents Acts, 1846 to 1908, are to be reduced to a proportionate extent.

The text of the Act is given in Appendix III.

CROWN PROCEEDINGS ACT, 1947

This Act reforms the ancient rules of procedure governing civil litigation by and against the Crown (e.g., by petitions of right) and deals, *inter alia*, with liability of the Crown in tort. As "the King can do no wrong" it was not possible, until the passing of this Act, to bring an action against the Crown in tort and this often created considerable hardship, as evidenced by case law.*

Section 2 (1) of the Act accordingly provides:

"Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject:

- (a) in respect of torts committed by its servants or agents;
- (b) in respect of any breach of those duties which a person

* In *Royster v. Cavey* (1947), K.B. 204, the occupier of the factory where the injuries were sustained was the Ministry of Supply and there was a nominal defendant, the actual defendant being the Crown. It was decided that the Court had no jurisdiction to hear a case where the cause of action alleged against the defendant was in truth not against the real defendant. The learned judge stressed the need for legislation to make it possible for cases to be brought against the Crown in tort, in view of the complexity of modern business. The Act permits the bringing of such actions against the Crown.

- owes to his servants or agents at common law by reason of being their employer; and
- (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property:

Provided that no proceedings shall lie against the Crown by virtue of paragraph (a) of this subsection in respect of any act or omission of a servant or agent of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or agent or his estate."

There are special provisions for postal packets (Section 9), the Armed Forces (Section 10) and acts done under prerogative and statutory powers (Section 11). There are also detailed provisions concerning jurisdiction and procedure, judgments and execution.

LAW REFORM (PERSONAL INJURIES) ACT, 1948

Section 1 of this Act abolishes the defence of common employment so that an employer is now liable for injuries sustained by an employee where those injuries are caused by the negligence of a fellow employee. The section also repeals the Employers' Liability Act, 1880.

Section 2 deals with the measure of damages and provides that

"In an action for damages for personal injuries (including any such action arising out of a contract), there shall in assessing those damages be taken into account against any loss of earnings or profits which has accrued or probably will accrue to the injured person from the injuries, one half of the value of any rights which have accrued or probably will accrue to him therefrom in respect of industrial injury benefit, industrial disablement benefit or sickness benefit for the five years beginning with the time when the cause of action accrued."

The text of this Act is set out in Appendix IV.

RIVERS (PREVENTION OF POLLUTION) ACT, 1951

This Act was designed "to make new provision for maintaining or restoring the wholesomeness of the rivers and other inland or coastal waters of England and Wales." The Rivers Pollution Prevention Act, 1876, and certain older enactments are repealed thereby.

It provides under Section 2, *inter alia*, that an offence is committed by a person:

- "(a) if he causes or knowingly permits to enter a stream any poisonous, noxious or polluting matter; or
- (b) if he causes or knowingly permits to enter a stream any matter so as to tend either directly or in combination with similar acts (whether his own or another's) to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences."

Severe penalties are provided, so that conviction on indictment renders the offender liable to a fine up to £200 and on summary conviction to a fine up to £50. Apart from the Act, an injunction might be obtained.

A conviction under the Act would be *prima facie* evidence of pollution and a public liability claim might follow.

LAW REFORM (LIMITATION OF ACTIONS, ETC.) ACT, 1954

The main purposes of this Act were to assimilate in certain respects the law applicable to proceedings against public authorities (including the Crown) and persons acting in pursuance of enactments applicable in certain other cases; also, to amend the law as to the time limits for bringing legal proceedings and as to the survival of causes of action against the estates of deceased persons.

Section 1—Repeal of Enactments

This Section wholly repealed the Public Authorities Protection Act, 1893, and Sections of certain other Acts which provided special periods of limitation or other privileges for defendants in legal proceedings.

Section 2—Amendment of Limitation Act, 1939

The Limitation Act, 1939, Section 2 (1) provides a limitation period of six years for actions founded on simple contract or on tort, but this was amended by the 1954 Act by the inclusion of the following proviso:

"Provided that, in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or

include damages in respect of personal injuries to any person, this sub-section shall have effect as if for the reference to six years there were substituted a reference to three years."

The 1954 Act binds the Crown, there are special provisions applicable to Scotland, and certain transitional provisions.

The words "consist of or include" should be noted, because according to this wording if there are proceedings on grounds of liability for damage to property and personal injuries the three years' limit must apply, but if a claim concerns liability for damage to property only the limitation period is six years. An insurer may have separate claims to deal with from different parties to which different periods of limitation may be applicable. The alteration, too, concerns only actions for damages for negligence, nuisance or breach of duty.

Section 2 also provides for an addition to Section 22 of the Limitation Act, 1939. Under the latter Section in certain cases where a person to whom a right of action has accrued was under a disability, the period of limitation was extended until six years from the date when the disability ceased or the person died, whichever event first occurred. The period of six years has been reduced to three and the section *does not apply* "unless the plaintiff proves that the person under the disability was not, at the time when the right of action accrued to him, in the custody of a parent".* If, therefore, the person under the disability was in the custody of a parent, the limitation of three years must apply from the time when the cause of action accrued.

"Personal injuries," according to Sub-section (3), includes "any disease and any impairment of a person's physical or mental condition".

Section 3—Amendment of Fatal Accidents Act, 1846

Actions under this Act had to be brought within twelve calendar months after the death of the deceased person. By this Section the time limit has been extended to three years.

Section 4—Amendment of Law Reform (Miscellaneous Provisions) Act, 1934

The 1954 Act provides that so much of Section 1 (3) of the 1934 Act "as provides that proceedings in respect of causes of action in tort which by virtue of that section survive against the estate of a deceased person are not to be maintainable unless

* The alteration affects only those cases where the damages claimed are for negligence, nuisance or breach of duty and consist of or include damages in respect of personal injuries to any person.

the cause of action arose not earlier than six months before the death of the deceased is hereby repealed". The limit is now three years, but the six months' limit after his personal representative took out representation is unaffected.

THE HOUSING ACT, 1957

This Act imposes an obligation on lessors of small houses, whereby there is implied in any contract of letting a condition that the house is at the commencement and throughout the tenancy fit for human habitation. Where a contract is made for letting for human habitation after 6 July, 1957, the Act applies to houses let at a rent not exceeding £80 per annum in the administrative county of London and not exceeding £52 elsewhere.*

The appropriate sections of the Act are set out in Appendix VII.

The reason for this statutory warranty of fitness arose out of the fact that in leases of small dwellings falling under the Housing Act repairing covenants are not given by landlords. The object of the legislation was to remedy this shortcoming by reason of the lack of bargaining power on the part of tenants of working class houses.

General third party and property owners' policies provide an indemnity not only in respect of common law liability, but also for accidents caused by defects in the premises for which there is a liability on the owner by reason of the existence of the Act. The material provision from the insurance point of view is the implied condition of letting that the house throughout the tenancy shall be maintained by the landlord in a condition fit for human habitation.

The owner has the right to inspect the premises (on giving 24 hours' notice in writing to the tenant or occupier) in order to ascertain their condition, and he is not ordinarily liable for accidents caused by a defect unless previous notice of that defect has been given to him by the tenant. It has been held that notice is not necessary where the defect is latent—*Fisher v. Walters* (1926), 2 K.B. 315—and also where the owner by himself or his agent saw, or could have seen, the condition at the time of his call to collect the rent.

* For contracts made before 31 July, 1923, the corresponding rents are London £40, outside London in a borough or urban district which at the date of the contract had according to the last published census a population of 50,000 or upwards, £26, and a house elsewhere £16; for contracts made after 31 July, 1923, and before 6 July, 1957, the rents are London £40 and elsewhere £26.

In *Morgan v. Liverpool Corporation* (1927), 2 K.B. 131, the plaintiff sustained injuries by the breaking of a sashcord. The Liverpool Court of Passage awarded damages, but the decision was reversed on appeal because no notice had been given to the landlord of the defect and also because, in the opinion of the Court, a broken window cord did not contravene the undertaking that the house should be in all respects reasonably fit for human habitation.

In *Summers v. Salford Corporation* (1943), A.C. 283, however, a similar accident had occurred, and it was there held that "sanitary defects included lack of ventilation. If a bedroom had only one window which could not be opened or shut without danger, that room might be said to be unfit for human habitation." There were two bedrooms only in the house and the breaking of a sashcord would throw a greater strain on its fellow cord so that, if both broke, the only window in the bedroom concerned would have to be permanently closed or permanently open until repairs had been effected. Previous notice did not come under review in this case, but it was confirmed by the House of Lords in *McCarrick v. Liverpool Corporation* (1947), A.C. 219. In this case, two stone steps leading from the kitchen to the back kitchen were defective and liability was contested by the defendants on the ground that no notice of the defect had been given to them. The House of Lords held that the provision imported by statute into the contract of tenancy must be construed in the same way as any other term of the tenancy and, so construed, did not impose any obligation on the landlord unless and until he had notice of the defect which rendered the dwelling not "reasonably fit for human habitation".

In *McCarrick v. Liverpool Corporation* (*supra*), it was the tenant's wife who fell and fractured her leg, but the appellant (the husband) suffered special damage assessed at £70, which was the basis of the action. This followed *Cavalier v. Pope* (1906), A.C. 428, which established that the only person who could recover was the tenant, on grounds of breach of contract. He could recover out of pocket expenses by reason of injuries to his relatives, but the injured person(s) had no claim against the landlord. This has been altered by the Occupiers' Liability Act, 1957—see p. 65—for Section 4 imposes on a landlord who is responsible to his tenant for the maintenance or repair of the premises the same duty of care towards his tenant's lawful visitors, in respect of the landlord's failure to carry out his obligations under the tenancy, as if he were himself the occupier.

OCCUPIERS' LIABILITY ACT, 1957

This Act, which became operative on 1 January, 1958, gave effect to the recommendations of the Third Report of the Law Reform Committee (Cmd. 9305) concerning the duty to be owed by an occupier of premises to his visitors in respect of injury caused by the state of the premises, and the liability of a landlord to his tenant's visitors so far as regards injury occasioned by the state of the premises which the landlord is under an obligation to maintain or repair.

The Act abolishes the distinction between invitees and licensees, but the law relating to trespassers is unchanged. The Act also abolishes the distinction between dangers by reason of the static condition of the premises and those occasioned by current operations. The term "premises" is not defined in the Act.

Common Duty of Care

Section 2 (1) provides that an occupier of premises owes the same duty—the "common duty of care"—to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor(s) by agreement or otherwise. There are circumstances in which it is not permissible for an occupier to restrict his liability, as, for example, Section 3 of this Act, which is dealt with below, and Section 97 of the Road Traffic Act, 1930.

The "common duty of care" is defined in Section 2 (2) in these words:

"The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there."

It follows that the duty is higher than that previously owed to a licensee (see p. 42) while instead of the duty to an invitee being to "use reasonable care to prevent damage from unusual danger" (see p. 41), the requirement is to "take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe. . ." What is "reasonable" and "reasonably safe" are thus left for the decision of the Court and it will be interesting to watch the development of case law under this Act.

In Section 2 (3) it is pointed out that the circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such

a visitor. Examples are given: (a) an occupier must be prepared for children to be less careful than adults; and (b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so. It is unusual for a statute to be worded in this way and the examples are merely two among many that could be quoted.

Section 2 (4) also quotes examples. It provides that in determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example):

- (a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
- (b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

The warning under (a) must be enough to enable the visitor to be reasonably safe, and it may be compared with the decision in *London Graving Dock v. Horton* (1951), A.C. 737, in which the House of Lords decided that if an invitee, by warning or otherwise, has full knowledge of the nature and extent of the risk, then he cannot succeed in an action against the invitor. The warning must now be sufficient to enable the visitor to be reasonably safe. As regards (b) it seemed from *Thomson v. Cremin* (1953), 2 All E.R. 1185, that an invitor was always liable to an invitee for the acts of the invitor's independent contractor; he could not divest himself of his duty by entrusting performance to an independent contractor. The new provision clarifies the law in this respect, although "reasonably" has still to be decided in each case.

Section 2 (5) provides that the common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor. Whether a risk

was so accepted is to be decided on the same principles as in other cases in which one person owes a duty of care to another. It will not be easy to prove that a visitor has "willingly accepted" risks within the terms of this sub-section.

According to Section 2 (6) persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not. This is self-explanatory and not without meaning when in these days there are so many officials who may call and enter premises.

Effect of Contract on Occupier's Liability

Section 3 deals with the effect of contract on an occupier's liability to a third party. Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract. This means that if an occupier A binds himself by contract with B to allow a third party C to enter the premises, then the common duty of care will be owed by A to C, regardless of what the contract may provide so far as regards B. Moreover, unless the contract provides to the contrary, A will also owe to C the duty to perform any higher obligations under the contract, whether undertaken for the protection of strangers (C) or not. Here is another example where a person who is not a party to the contract derives benefit therefrom.

At the same time, a contract shall not have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other like operation by persons other than himself, his servants and persons acting under his direction and control. (Section 3 (2))

The term "stranger to the contract" is defined (Section 3 (3)) as "a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and accordingly includes a party to the contract who has ceased to be so entitled".

Section 3 (4) covers the position where a landlord uses parts of the premises retained by him. It provides that where by the terms or conditions governing any tenancy (including a statutory tenancy which does not in law amount to a tenancy) either the landlord or the tenant is bound, though not by contract, to permit persons to enter or use premises of which

he is the occupier, then Section 3 shall apply as if the tenancy were a contract between the landlord and the tenant. The landlord thus owes them the common duty of care and any higher obligation under the lease or tenancy agreement, whether undertaken for their protection or not, unless specifically provided to the contrary. (Previously, such persons were merely licensees.)

Who is a visitor?

The rules given in Sections 2 and 3 as above replace the rules of the common law to regulate the duty which an occupier of premises owes to his visitors in respect of dangers by reason of the state of the premises or things done or omitted to be done on them, but they do not alter the rules of the common law as to the persons on whom a duty is imposed or to whom it is owed. It follows that the persons who are to be treated as an occupier and as his visitors are the same as the persons who would at common law be treated as an occupier and as his invitees or licensees. Thus canvassers will be regarded as having permission to enter, as illustrated by *Dunster v. Abbott* (1954), 1 W.L.R. 58. There is one exception—Section 1 (4) which provides that a person who enters premises in exercise of rights conferred by virtue of an access agreement or order under the National Parks and Access to the Countryside Act, 1949, is not, for the purposes of the Occupiers' Liability Act, 1957, a visitor of the occupier of those premises. A person in this category is in a class by himself; he is not a trespasser and he is not a visitor for the purposes of the 1957 Act.

Moveable Structures: Property Damage

The new rules also apply in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply to regulate (a) the obligations of a person occupying or having control over any fixed or moveable structure, including any vessel, vehicle or aircraft; and (b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

(a) has no doubt been inserted to make the position clear, but (b) may cause difficulties. A master, for instance, owes no general duty of care so far as regards the property of his servants but there is no specific reference to this in the new Act.

Landlord's Liability with Obligation to Repair

Where premises are occupied by any person under a tenancy which puts on the landlord an obligation to that person for the maintenance or repair of the premises, Section 4 (1) provides that the landlord shall owe to all persons who or whose goods may be lawfully on the premises, the same duty, *in respect of dangers arising from any default by him in carrying out that obligation*, as if he were an occupier of the premises and those persons or their goods were there by his invitation or permission (but without any contract). This alters the rule that a landlord in the circumstances mentioned (e.g., under the Housing Act, 1957) is liable to the tenant alone for breach of contract (see also p. 40). (If the landlord has not covenanted to maintain or repair premises he will as a general rule still be under no obligation to tenants or visitors.)

Section 4 (2) imposes a corresponding obligation on any superior landlord who has undertaken a similar repairing obligation to his own tenant and so on up any chain of landlords until the chain is broken by the existence of a landlord who is not under an obligation to maintain or repair. It is a difficult part of the Act to interpret.

For the purposes of Section 4, where premises comprised in a tenancy (whether occupied under that tenancy or under a sub-tenancy) are put to a use not permitted by the tenancy—and the landlord of whom they are held is not debarred by his acquiescence or otherwise from objecting or from enforcing his obligation—then no persons or goods whose presence on the premises is due solely to that use of the premises shall be deemed to be lawfully on the premises as regards that landlord or any superior landlord, whether or not they are lawfully there as regards an inferior landlord.

Section 4 (4) stipulates that a landlord is not to be deemed to have made default in carrying out any obligation to the occupier unless his default is such as to be actionable at the suit of the occupier or, as regards a superior landlord whose obligation is to an inferior landlord, his default in carrying out that obligation is actionable at the suit of the inferior landlord. This carries further the provisions of Section 4 (1).

Section 4 is not to put a landlord under a greater duty than the occupier to persons who or whose goods are lawfully on the premises by reason only of the exercise of a right of way or rights conferred by an access agreement or order under the National Parks and Access to the Countryside Act, 1949. This

was dealt with above. Nothing in the section, moreover, shall relieve a landlord of any duty which he is under apart from the section.

For the purposes of Section 4 obligations imposed by any enactment in virtue of a tenancy shall be treated as imposed by the tenancy, and "tenancy" includes a statutory tenancy which does not in law amount to a tenancy, and includes also any contract conferring a right of occupation, and "landlord" is to be construed accordingly.

Liability in Contract

Where persons enter or use, or bring or send goods to, any premises in exercise of a right conferred by contract with a person occupying or having control of the premises, the duty he owes them in respect of dangers due to the state of the premises or to things done or omitted to be done on them, in so far as the duty depends on a term to be implied in the contract by reason of its conferring that right, shall be the common duty of care. This applies to fixed and moveable structures as it applies to premises. Nevertheless, Section 5 does not affect the obligations imposed on a person by virtue of any contract for the hire of, or for the carriage for reward of persons or goods in, any vehicle, vessel, aircraft or other means of transport, or by virtue of any contract of bailment.

Since *Maclenan v. Segar* (1917), 2 K.B., 325, text-book writers have referred to liability to contractees with the implied warranty of safety, but this Section makes it clear that the duty is to be the common duty of care, subject, naturally, to the specific terms of the contract.

Application to Crown

The Act binds the Crown but as regards the Crown's liability in tort shall not bind the Crown further than the Crown is made liable in tort by the Crown Proceedings Act, 1947. It is provided also (Section 6) that that Act and, in particular, Section 2 of it, shall apply in relation to duties under Sections 2 to 4 of the Occupiers' Liability Act, 1957, as statutory duties.

CHAPTER V

PROPOSAL AND POLICY FORMS

In the accident department, unlike fire department practice, it is an almost invariable rule to obtain a completed form of proposal. It follows that proposal forms are of the utmost importance in all kinds of accident insurance underwriting.

The proposer is required to observe the utmost good faith in the completion of the proposal form and at the end of each form there is a declaration whereby it is warranted "that the above statements are true and complete and that nothing materially affecting the risk has been concealed"—or words to that effect. This converts the inherent duty of utmost good faith into a contractual duty, as explained in Chapter II which deals with insurance principles. Moreover, the proposal form is referred to in the policy itself (as will be seen later) and it may be incorporated therein by direct reference.

THIRD PARTY PROPOSAL FORM

Third party insurance, as transacted at the present day, comprises many varying types of risks and it is not practicable, therefore, to devise one proposal form suitable for all. Indeed, third party insurance generally is not standardised and there is therefore no uniformity in the questions asked, or in the method of their expression. Most insurers use one form, of wide range, for what may be termed general risks. In addition, they have special forms for particular risks, such as lifts, professional indemnities, personal liability, and sportsmen's indemnities. Insurers with very large third party accounts may print proposal forms for individual trades.

Questions

In this chapter, it is intended to deal only with those questions which are common to practically all third party proposal forms. The special questions, essential to the proper assessment of risks for which various separate policies are issued, are discussed in the respective chapters relating to such policies.

The questions common to third party proposal forms generally are as follows:

1. Name of proposer in full**2. Proposer's (business) address**

The information disclosed is necessary for the proper preparation of the policy. The risk may be spread over a considerable area, but if it is necessary to inspect, the surveyor will know the address to which he should go in the first instance by the answer to this question.

3. Proposer's trade or business

This is material because for most third party risks the rate applicable depends upon the occupation of the insured. It behoves the proposer, therefore, to take care that the terms in which he expresses his business are clear and concise and do not admit of several interpretations. Otherwise, in the event of a claim the insurers may contend that they have been misled as to the type of business in which the proposer is engaged. Further, the policy itself frequently refers to the insured's business, as stated in the proposal form, and declares that such is the proposer's business "and no other for the purposes of this insurance". If, therefore, a proposer expresses his business in terms which are not sufficiently wide, he may find, when a claim occurs, that his policy does not provide for some particular branch of his business because it cannot reasonably be included in the expression which he has used in answer to this question in the proposal form.

4. State limit of indemnity required £..... for any one accident

Insurers issue policies for general third party business with a limit of indemnity for any one accident, but unlimited in amount in the year of insurance. A substantial limit is essential, and the amount must to some extent depend upon the type of risk involved. Where there is a catastrophe hazard, so that a number of persons may be killed or injured in any one accident, a very high limit is advisable.

5. Past Claims Experience

What claims have been made upon the proposer during the past five years in connection with accidents to members of the public? (Accidents which have not resulted in claims are to be included.)

Year	No. of Accidents	Paid £	Amount
			Estimated Outstanding £
19.....
19.....
19.....
19.....
19.....

The past claims experience usually gives an index of the degree of care exercised by the insured and his employees. Where it is shown by the answer to this question that the claims, either in number or amount, have been abnormal, special attention will be given to the reasons for this. Where a risk is large enough to warrant rating on its merits apart from the rates applicable to smaller risks as a whole, the experience is of more than usual importance.

If the information given in reply to this question is not sufficient to enable the insurers to judge the reason for the frequency of claims, it may be necessary to obtain further details and, before acceptance is confirmed, to require the adoption of precautions to minimise the risk of certain types of accidents in the future. The underwriter may be able to take a more favourable view, when rating the proposal, in the light of the surveyor's report and the recommendations carried into effect.

6. Previous Proposals and Insurances

Has any proposal for insurance of the risk been previously made or has the risk been previously insured? If so, state with what insurers, and whether such proposal or renewal has been declined or an increased rate required.

The information disclosed by this enquiry is complementary to that given in reply to the previous question. Declination or increase of rate calls for an explanation, and if unsatisfactory details appear, the insurers to whom the proposal is submitted will probably place themselves in touch with the insurers who previously held the risk, with a view to obtaining information not always available from the proposer.

Declaration

I/We desire to insure with the Company, Limited, in respect of third party risks. I/We warrant that the above statements are true and complete and that nothing materially affecting the risk has been concealed by me/us, and

I/we agree (should the premiums or any part thereof be calculated on wages) to render at the end of each period of insurance a statement in the form required, and to pay premium on any amounts in excess of the estimates upon which premium has been based; and I/we further agree that this proposal shall be incorporated in and taken as the basis of the proposed contract between me/us and the Company, Limited, and I/we agree to accept a Policy in the Company's usual form for this class of insurance.

This declaration is dated and signed by the proposer. As previously mentioned, the declaration assumes particular significance, since it is agreed between the parties that the information to which it relates shall become the basis of the contract. This is further strengthened by the reference in the policy to the proposal form which, of course, includes the declaration. Variations in the form of wording are common.

A specimen proposal form appears in Appendix IX.

THIRD PARTY POLICY FORM

The lack of standardisation of most classes of third party insurance accounts for the dissimilarity of policy wordings, as also of proposal forms. The clauses and conditions set out below must be read with this fact in mind. At the same time, within recent years offices generally have adopted the scheduled form of policy because of the advantages explained below. Exceptions have been reduced as far as possible, and the intention of the contract has been made clearer than previously.

Special policy forms are necessary for different types of risks, such as lifts, personal liability, and professional indemnities of various kinds, together with numerous other contracts which serve particular purposes. In this chapter, reference is made only to those features which are common to practically all third party policies. The distinctive operative clauses and conditions essential to special types of policies are studied in the chapters which relate to such contracts.

The Scheduled Policy

A policy prepared in scheduled form is one where the whole of the typewritten matter is located in the schedule. It follows that the layout of a policy in ordinary form is quite different. Moreover, reference to definitions is reduced to a minimum by reason of condition I, which provides that one definition of a term or expression is sufficient for the entire policy.

Advantages to the Policyholder. A scheduled form of policy has the merit of conciseness, if only because of the elimination of repeated reference to definitions. In consequence, it is easier for the policyholder to check that the cover provided is in accordance with his wishes, and clearly it is a simpler task to check the typewritten matter if it is collected together in one part of the policy.

Advantages to the Insurers. The typist's task is facilitated if the typewritten matter is limited to the schedule, with consequent reduced risk of error. The scheduled form of policy also speeds up the work of the policy examiner and likewise reduces the margin of error.

Recital Clause

Whereas the Insured carrying on the Business and no other for the purposes of this Insurance by a proposal and declaration which shall be the basis of this Contract and is deemed to be incorporated herein has applied to the Company Limited (hereinafter called the Company) for the insurance hereinafter contained in respect of accidents occurring during any Period of Insurance and has paid or agreed to pay the Premium as consideration for such insurance.

This clause sets out the name of the insurers, which alternatively may appear in the schedule itself, and makes reference to the proposal and declaration which are the basis of the contract and are by this means incorporated in the policy itself. Under the scheduled form of policy it is unnecessary to insert the name of the insured or his business since all these particulars and likewise details relating to the first period of insurance and amount of premium are located in the schedule.

Operative Clause

Now this Policy witnesseth that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon the Company will indemnify the Insured in respect of accidents . . . against liability at law for damages in respect of . . .

This clause sets out the circumstances in which the insurers are to indemnify the insured. For the purposes of this present chapter, reference has been made only to that portion of the operative clause common to practically every third party policy and it is simply necessary here to point out that as a rule the indemnity is in respect of damages for which the insured may become *liable at law* as the result

of "accidents". The term "accident" is not defined, and it may have slightly different meanings according to the context, although it refers essentially to something fortuitous, unexpected and of sudden onset. The word "incident" has sometimes been used.

The expression *liability at law* has to be borne in mind in dealing with claims, since there are many claims which may be made against an insured for which he is not legally responsible and for which, therefore, no indemnity is provided under the policy. Whether or not it may be politic for the insurers to meet any such claim has to be decided when the claim arises. As will be observed from a later clause, the insurers will be responsible for the payment of costs incurred in the defence of the insured, and they may prefer to settle the claim for which there is no strict legal liability under the policy, rather than incur such costs.

Nevertheless, insurers always *handle* bogus or fraudulent claims on behalf of the insured, whether or not a payment is made, and bear the costs involved, so long as the claim is *prima facie* of a type contemplated by the indemnity. For example, if a ceiling fell and a claim were made, the insurers would deal with it under a third party (general) policy, although there might be no legal liability. They would not, however, deal with a claim arising out of a cycling accident because "cycles" are among the Exceptions to a third party (general) policy; hence no such claim, whether or not there were legal liability, would be handled by the insurers under a policy of that type.

Limit of Indemnity and Costs and Expenses

The liability of the Company in respect of or arising out of one occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause shall not exceed the Limit of Indemnity.

In respect of a claim for damages to which the indemnity expressed in this Policy applies the Company will also pay

- (a) all costs and expenses recovered by any claimant from the Insured and
- (b) all costs and expenses incurred with the written consent of the Company.

The reference to "occurrence" has particular significance when it is realised that one happening, in respect of which the insured is to be indemnified under the policy, may involve a large number of persons as, for example, when a

horse bolts and causes injury to a number of pedestrians.

Insurers usually pay costs and expenses over and above the limit of indemnity mentioned in the policy, but at one time insurers made the limit of liability inclusive of costs and expenses.

Costs and expenses are not synonymous. It is usually considered that costs refer to legal costs and expenses to other disbursements.

Indemnity to Personal Representatives

In the event of the death of the Insured the Company will in respect of the liability incurred by the Insured indemnify the Insured's personal representatives in the terms of and subject to the limitations of this Policy provided that such personal representatives shall as though they were the Insured observe fulfil and be subject to the Terms Exceptions and Conditions so far as they can apply.

A clause in these terms has been included in all third party policies since the passing of the Law Reform (Miscellaneous Provisions) Act, 1934. It has been necessary because death no longer puts an end to a right of action and it is therefore only reasonable to indemnify an insured's personal representatives in respect of any liability incurred by him, in the terms given above—see p. 47.

Exceptions

Under the scheduled form of policy the exceptions appear on the face of the document instead of being located in the policy conditions. Indeed, in some of the older types of policies certain of the exceptions were found on the face of the policy and others in the conditions, which tended to lead to misunderstanding.

An exception which is common to all policies is the war risks exclusion clause. This usually reads:

The Company shall not be liable in respect of any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power.

This follows the terms of the War Risks Agreement, to which all insurers are parties, and the clause is self-explanatory.

Signature or Attestation Clause

This clause varies with the Articles of Association or other instrument regulating the practice of the insurers and its form depends upon the method of execution thereby required.

POLICY CONDITIONS

1. Definitions. This Policy and the Schedule shall be read together and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such meaning wherever it may appear.

The intention of this provision is to avoid continuous reference to definitions because one definition of any particular term or expression used in the policy is sufficient for the entire contract, as mentioned above. (In some insurers' policies the above is not included as a numbered condition, but is inserted in italicised type immediately above the conditions.)

2. Notification of Accidents. The Insured shall give notice in writing to the Company as soon as possible after the occurrence of any accident with full particulars thereof. Every letter claim writ summons or process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given in writing to the Company immediately the Insured shall have knowledge of any impending prosecution or inquest in connection with any accident for which there may be liability under this Policy. No admission offer promise payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim. The Insured shall give all such information and assistance as the Company may require.

This condition requires notice to be given to the insurers as soon as possible after the occurrence of an accident or, in some forms, that notice be given within some specified time. The method to be adopted by the insured generally is outlined and the insurers are given the right to conduct all negotiations in connection with any claim. The insured must give every assistance to enable the insurers to do so, no matter what course they may decide to adopt.

The closing words of the condition reaffirm the common law right of subrogation, to which reference has been made in Chapter II.

3. Excess Liability. In connection with any claim or claims against the Insured arising out of one occurrence or all occur-

rences of a series consequent on or attributable to one source or original cause the Company may at any time pay to the Insured the Limit of Indemnity (after deduction of any sum or sums already paid as damages) or any lesser amount for which any such claim or claims can be settled and upon such payment the Company shall relinquish conduct and control of and be under no further liability in connection with such claim or claims except for costs and expenses recoverable from the Insured or incurred with the written consent of the Company in respect of matters prior to the date of such payment.

If a claim is for an amount in excess of the limit of liability mentioned in the policy, the insurers are hereby entitled to pay the limit mentioned in the policy, together with the costs incurred up to the date upon which they decide to make the payment. They are then relieved from all further liability in connection with the accident. Otherwise, the insurers might find themselves forced to deal with a claim out of all proportion to the limit of indemnity (involving heavy law costs) and to make a payment in respect of which they might be unable to effect recovery from the insured for the excess over and above the amount payable under the terms of the policy.

4. Adjustment Condition. If any part of the Premium or Renewal Premium is calculated on estimates furnished by the Insured the Insured shall keep an accurate record containing all particulars relative thereto and shall at all times allow the Company to inspect such record. The Insured shall within one month from the expiry of each Period of Insurance furnish to the Company such particulars and information as the Company may require. The premium for such period shall thereupon be adjusted and the difference paid by or allowed to the Insured as the case may be.

This condition varies with the type of policy concerned and in view of the numerous bases for premium calculation it is so worded as to be of general application.

5. Contribution. If at the time any claim arises under this Policy there be any other insurance covering the same liability the Company shall not be liable to pay or contribute more than its rateable proportion of any such claim and costs and expenses in connection therewith.

It is not often that this clause is brought into operation, for in the majority of claims one policy only is in force.

Sometimes, however, a separate property owner's indemnity is in existence, while the risk may be covered by the third party policy as well if it is a contract which automatically includes an indemnity for accidents occasioned by defects in the *premises*, ways, works, machinery, and plant.

6. Cancellation. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at the Insured's last known address and in such event the Insured shall become entitled to the return of a proportionate part of the Premium or Renewal Premium corresponding to the unexpired period of insurance.

The cancellation condition is very rarely invoked, and its inclusion in policies of insurance generally is sometimes criticised.

Nevertheless, if the risk is found to be entirely different from what was contemplated, with a consequent disastrous claims experience, it is in the interests of the body of policy-holders generally that the risk should not be continued on the company's books. In certain circumstances, it may be possible for the insurers to treat the contract as void on grounds of non-disclosure of material facts, and in any such instance the insurers are giving the policyholder better treatment by relying instead upon the cancellation clause with its seven days' notice of termination of the risk.

7. Insured to Take Precautions. The Insured shall take reasonable precautions to prevent accidents and illness and to comply with all statutory or other obligations and regulations imposed by any Authority and shall maintain the Premises and all ways works machinery and plant in sound condition. In the event of the discovery of any defect or danger the Insured shall forthwith cause such defect or danger to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances may require.

It is a primary principle of insurance that the insured should take the same precautions as if he were uninsured, but it is desirable to draw the insured's attention to this by means of a specific condition, worded on the above lines. In many instances, liability turns upon the insured's knowledge of a defect or danger connected with his premises or business, and it is essential that immediate steps be taken to remedy the defect or danger, once it has been brought to the insured's attention.

8. Arbitration. If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to an Arbitrator to be appointed by the parties in accordance with the Statutory provisions in that behalf for the time being in force. Where any difference is by this Condition to be referred to arbitration the making of an Award shall be a condition precedent to any right of action against the Company.

Members of the British Insurance Association and Lloyd's gave an undertaking to the Law Reform Committee in 1957 —so far as regards policies issued in Great Britain and Northern Ireland—that in future arbitration would not be a condition precedent to the payment of a claim except where the dispute concerned the amount of a claim. It was agreed that liability would in future be decided by the Courts unless the parties themselves mutually agreed on arbitration.

In consequence, the above condition does not appear in the third party (general) policy or in any other similar policy which relates to an indemnity in respect of legal liability only. Where policies include a section relating to loss of or damage to the insured's own property, for example, certain sports policies, and likewise estate owners' or farmers' indemnities where cover is granted in respect of fatal injury to animals, the arbitration condition is inserted.

9. Observance and Fulfilment of Conditions. The due observance and fulfilment of the Terms Conditions and Endorsements so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.

By this clause the insurers are able to incorporate endorsements in the policy itself as though they were part of the printed document. Further, all terms and conditions, so far as they relate to anything to be done or complied with by the insured, are given the force of conditions precedent, that is, precedent to the insurers' liability, so that, in the absence of complete fulfilment, no liability attaches to them.

SCHEDULE

The Insured	
The Business	
Limit of Indemnity	
Period of Insurance	Renewal Date
(a) From To (b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept the Renewal Premium	
Premium £ Subject to adjustment in terms of Condition 4	Renewal Premium £ Subject to adjustment in terms of Condition 4
The Premises	
Signed on the	Examined

ENDORSEMENTS

There is a space provided for endorsements.
A specimen policy form appears in Appendix X.

CHAPTER VI

GENERAL THIRD PARTY INSURANCE (I)

The large majority of policies issued are written on what is known as the general third party policy form. As its name signifies, this policy is so drafted as to be readily adaptable to the many and diverse risks for which third party insurances are required. Certain indemnities, however, are necessarily subject to special conditions as, for example, those relating to passenger lifts and cranes, for which it is more convenient to draw up separate policy forms.

As has been explained already, there is some liability to the public, however slight, inherent in every business which may be carried on. In practice, the general third party policy is the form of contract used whenever (with certain exceptions) the indemnity relates to liability for accidents causing bodily injury to, or damage to the property of, others as the result of the negligence of the insured or of his employees in the ordinary conduct of a business or profession. Such policies are usually wide in scope and include an indemnity in respect of liability for accidents occasioned by defects in the insured's ways, works, machinery, premises or plant situated at the address mentioned in the schedule to the policy. (The modern policy form relates to *liability at law* at the Premises and in connection with the Business, so that specific reference to ways, works, machinery, and the like is unnecessary.) Moreover, in practice, the business is adaptable, and where an insured carries on work away from his own premises, suitable extensions of the policy are readily made. The property owners' liability is as a rule not excluded. Policies are freely extended, in practice, to indemnify the insured in respect of other accidents for which he may be legally responsible—those of food poisoning, the bursting of bottles, products liability generally, and other similar hazards.

PROPOSAL FORM

Certain questions, common to practically all third party proposal forms, have been discussed in Chapter V, and in this chapter it is therefore necessary only to deal with the special

enquiries which general third party insurance demands. While it has been practicable to draft a form which is suitable for the majority of proposals, it may, from time to time, be necessary to insert supplementary questions to deal with particular aspects of any individual risk which may be offered. The following questions call for comment.

Schedule

1. (a) Give below details of employees and the premises to which the cover is to apply.

EMPLOYEES		PREMISES	
Number.	Description of occupation.	Estimated annual wages. £	Situation.

- (b) Give below particulars of all lifts cranes hoists and teagles owned or used in the Trade or Business.

LIFTING MACHINERY (other than Passenger Lifts)

Item No.	Description.	Whether situated in the premises or used in work away therefrom.

Employees. Retail shop premises are generally charged at a flat premium per shop, but for many other risks the premium is often based on the wages expended. The reason for this is that the greater the wages expended, the larger the number of persons employed, with the greater possibility of accidents caused by such employees.

The wages for outside work usually attract a higher rate of premium than wages for work on the insured's own premises, in view of the greater risk of accidents affecting third parties outside the insured's own premises.

Premises. It sometimes happens that an indemnity may need to relate to several main premises. Alternatively, the insured's work may extend beyond his own premises, and this is dealt with by a separate question below.

Lifting Machinery. The general third party policy is not primarily intended to provide an indemnity in respect of accidents caused by lifting machinery, but it may be convenient to include liability for accidents occasioned by lifting machinery, other than passenger lifts and cranes, within the scope of the indemnity. Service and goods lifts are commonly included, subject to the insurers being satisfied that there is no undue hazard connected with the risk, and to an additional premium, if necessary. Enquiry will be made as to the arrangements which exist for the periodical inspection of such machinery by independent competent engineers. In many circumstances, as, for example, builders who are contractors for large contracts, it would be unwise to include lifting machinery which they may use on work away from their own premises, without careful investigation. Cranes may overhang public roads and footpaths, and large cranes require consideration as regards the limit of indemnity for any one accident. Frequently, it is necessary also to provide for risks of toppling and collapse, which call for special rating and consideration.

2. Work Away from Premises

Will work be undertaken elsewhere than on the premises? If so, give details and estimated annual wages applicable thereto	£
---	-----	-----	-----	---

It frequently happens that the insured's work entails the employment of workmen away from his own premises. For retail shops, a single address is usually inserted, but, even then, a piano dealer, for instance, may employ tuners with the risk of accidents occurring at the homes of customers. Builders, decorators, plumbers, electricians and heating engineers obviously undertake a considerable amount of work away from own premises. If a policy is issued without it being made clear that (unless otherwise stated) the indemnity is restricted to accidents occurring at the insured's own premises, friction may sooner or later occur between the insurer and the insured. Many insurers regard their policies as applicable to delivery by hand, hand cart, or cycle and, if so, the insured is usually given a sufficiently wide indemnity to meet ordinary purposes. If such work is undertaken, however, it is desirable to recognise it by specific mention in the policy.

3. Sub-contracts

Will any work be sub-contracted? If so, give precise details of all such work and estimated annual contract prices under each heading	(a)	£
	(b)	£
	(c)	£

If the proposer's work is such that he engages the services of sub-contractors, the insurers must know of this so that this may be recognised in assessing the risk. Although the principal contractor may not directly employ the workmen of sub-contractors, it is likely that in the event of an accident caused by a sub-contractor's workman the principal contractor will be joined as a defendant to an action. This involves costs and expenses incurred in his defence.

4. Condition of Premises and Plant

Are the premises, plant and machinery in sound condition and will they be kept in good repair?
--

It is essential that the premises, plant and machinery be in sound condition and be so maintained. Otherwise, there would be no defence to a third party claim.

5. Trap doors, other Openings and Signs

Describe fully and state position of	
(a) any trap doors, cellar flaps, or other openings in floors, pavement, etc., including pavement lights	(a)
(b) any outside advertising boards or signs ...	(b)

It is usual to survey risks proposed for general third party insurance, but surveys are frequently dispensed with for small retail shops and the like. This question then

assumes importance. Each of the features mentioned may be undesirable, and enquiry is necessary concerning the method by which openings are protected, and how the traps or other covers are secured when they are not in use. Advertising is important in all businesses and there is an increasing use of signs. The neon sign, in particular, is widely favoured; it involves special hazards and may even be the subject of a separate policy issued by the engineering department.

6. Apparatus Used. Will any machinery, electrical appliance or pressure vessel be used? If so, is such plant insured against breakdown or explosion?

The details disclosed, taken in connection with the number of persons who visit the premises, should enable an experienced underwriter to judge whether or not there is a considerable added risk of accidents to third parties. Pressure vessels should as a rule be insured by the engineering department.

7. Explosives and Chemicals Used. What acids, gases, chemicals or explosives will be used, and to what extent?

If strong acids are stored and used, enquiry must be made as to the risk of accidents to persons visiting the premises, and whether there is any possibility of children, for example, having access to carboys—empty or full. The use of chemicals is common and information is required as to the substances used. The use of explosives calls for little comment and their use is normally confined to quarry and similar risks. If explosives are in use, however, details are required of surrounding roads, footpaths and property. Care must be taken to ascertain that the risk of bodily injury or damage to property is not great; also, that the methods of storage are satisfactory and not such that children or others can obtain possession of dangerous materials.

8. Radioactive Substances Used

Will any radioactive substances be used? If so, give precise details	
--	--

This enquiry is necessary because of entry into the atomic age.

9. Extensions of Cover

Is it desired to insure against liability for accidents arising—

- (a) out of the use on the Proposer's business of pedal cycles? If so, state number of such cycles
 (i) owned by the Proposer (i)
 (ii) belonging to employees (ii)
- (b) out of fire and explosion? (Accidents caused by the bursting of steam boilers or other steam pressure vessels are not covered by this extension)
- (c) from goods sold? If so, please attach list of products and state against each the estimated annual turnover, to what extent they are marketed overseas and in what countries

In recent years insurers have included these questions, and it is certainly advisable to do so because it avoids misunderstandings. The proposer then knows that, if he requires the protection outlined, it is necessary for the indemnity to be extended accordingly.

The various considerations involved are studied later in the book.

POLICY FORM

Operative Clause

Now this Policy witnesseth that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon the Company will indemnify the Insured in respect of accidents happening at the Premises and in connection with the Business against liability at law for damages in respect of:

- (i) death of or bodily injury (including illness) to any person not being a member of the Insured's family nor a person who at the time of the accident is engaged in and upon the service of the Insured under a contract of service or apprenticeship;

(ii) damage to property not belonging to nor held in trust by nor in the custody or control of the Insured or a member of the Insured's family [or a person who at the time of the accident is engaged in and upon the service of the Insured under a contract of service or apprenticeship.]*

Subject to the exceptions mentioned below, the insurers agree to indemnify the insured in respect of his liability at law as above. If the insured's work is such that he engages the services of sub-contractors, then usually the insurers require a separate wages figure in respect of sums paid to the employees of sub-contractors, upon which the premium for the further risk is calculated. Although the principal contractor may not directly employ these men, it is likely that in the event of an accident he will find that he has been joined as a defendant to an action.

The cover is such as to provide an indemnity in respect of liability at law for almost any accident, limited to the business mentioned in the schedule, which may occur upon the insured's premises affecting third parties. This is subject to the general exceptions mentioned in the policy.

Liability for death of or bodily injury to any person who is *at the time of the accident* engaged in and upon the service of the insured under a contract of service or apprenticeship is excluded, as such liability should be insured under a separate employers' liability policy. As is usual, damage to property held in trust by or in the custody or under the control of the insured or of other persons as specified is excluded. So far as fire risks to the latter are concerned, insurance is obtained by a separate item in an ordinary fire policy.

The reference to "damage to property not belonging to... the Insured" makes it clear that damage to the insured's own property is excluded. This is necessary because an insured could incur such a liability because of his contractual relationship with another party. An indemnity may be given to the principal to accept all liability for damage to property irrespective of ownership or cause. If, in such circumstances, the principal caused damage to the contractor's property the contractor would have to make it good, and the contractual liability exclusion under the policy may have been deleted or modified.

* Some insurers omit the words in brackets, so that the insured's legal liability for damage to employees' effects is included.

Exceptions

The Company shall not be liable in respect of:

- (1) accidents caused directly or indirectly by or traceable to the bursting of boilers, fire, explosion, animals, cycles, horse-drawn or mechanically-propelled vehicles, aircraft, ships, boats or craft of any kind, or foul berthing or passenger lifts or cranes.

Apart from fire and explosion and cycles (which are dealt with by extensions), the risks of accidents in the other circumstances mentioned may usually be insured under special forms of policy.* It would often be impracticable or unwise to include these risks within the scope of an ordinary third party policy. Boilers, for example, necessitate periodical inspections by skilled engineers, while as regards mechanically-propelled vehicles, motor policies are more appropriate, in view of the varying bases of premium calculation, and the requirements of the Road Traffic Acts. For ships, boats or craft of any kind, and foul berthing risks, marine policies or protection and indemnity club indemnities will usually be the appropriate type of contract.

It is now the practice to cover under a general third party policy the *liability of the insured* for accidents arising out of the use of employees' own cycles in the business of the insured, generally at a small additional premium, depending upon the number of employees using their cycles in the business, as well as liability for accidents arising out of the use in his business of cycles owned by the insured.

- (2) claims arising out of

(a) the action of any commodity used or applied or administered by the Insured or by any employee or agent of the Insured or sold or supplied by the Insured for use consumption or application.

This exclusion relieves the insurers of liability for claims on account of the use of articles supplied, such as the bursting of hot water bottles, and risks connected with food and drink, medicine and products generally. The liability of the vendor for such claims is dealt with under a products liability indemnity (see p. 129)

* This also applies to animals other than liability for domestic dogs and cats for which provision, where necessary, can be made by amendment to the policy. In some premises there is a mongoose to keep down rats and mice and here, too, this matter is readily dealt with by amendment to the policy. Moreover, liability for accidents connected with horse-drawn vehicles is now frequently insured as an extension to the third party (general) indemnity, except in Ireland.

(b) injury or damage arising in the course of or as the result of remedial or other advice or treatment given or administered by the Insured or by any person acting on behalf of the Insured.

Treatment risks require special consideration, and while it was at one time not usual to deal at all with liability for such risks in the third party department, this has been modified more particularly in relation to factory clinics and first aid posts. The subject is discussed in Chapter XIII, which deals with professional indemnities.

(c) damage to any building, structure or land caused by vibration or by the withdrawal or weakening of support due or alleged to be due to any operations of the Insured or any person acting on behalf of the Insured.

This exclusion is aimed particularly at those insured who undertake structural work of one kind or another, such as builders. There is always the possibility of subsidence of an adjoining or neighbouring building at the time of, or following, building operations, for which a claim may be made against the insured. If a claim can be substantiated, then there is reason to suppose that the builder may have been incompetent.

(d) damage to property of any description due to the manufacture construction alteration repair or treatment of such property by the Insured or by any person acting on behalf of the Insured.

Here again, the main intention of the exclusion is to relieve the insurers from claims on account of defective workmanship.

(e) liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement.

This receives treatment in Chapter VII.

Other exclusions are sometimes introduced into third party contracts, depending upon the type of insurance. For example, care is needed in accepting liability on account of damage caused by flooding under policies issued to public authorities.

CONDITIONS

The conditions of a general third party policy are those considered in Chapter V.

CHAPTER VII

GENERAL THIRD PARTY INSURANCE (II)

In the last chapter, the normal scope of cover provided by a general third party policy was examined, but in practice certain modifications and extensions may from time to time be necessary to meet the requirements of particular trades. In this chapter, the principal departures from the usual indemnity are discussed in sufficient detail to enable the reader to realise the extent to which third party insurances may be adapted to the special needs of proposers.

CONTINGENT LIABILITY

Where one party, the principal, arranges with another, the contractor, to undertake certain work for him, there is always the possibility that the principal may be joined as a defendant in an action arising out of the negligence of the contractor's employees. An indemnity to meet this contingency may be arranged by the issue of a policy in the joint names as above, or the principal may effect a policy in his own name in respect of his personal liability. A builder may be engaged to demolish existing buildings and to erect a new one. Accidents of various kinds are possible, and the principal may be joined with the contractor as a defendant to an action, or an action may be commenced against him independently. In such circumstances, the principal may sometimes be liable, as, for example, where the foundations of adjoining properties are affected to such an extent that damage is caused to structures (with possible loss of life to occupants or passers-by) and the principal has neglected to ensure that proper precautions should be taken for the safety of such buildings. The builder's policy, if issued in the usual terms, may exclude liability for damage to adjoining structures, but the principal may sometimes effect a contingent liability policy to provide for his personal liability.

When a principal frequently employs contractors on a number of contracts, the type and extent of which cannot be foreseen at the commencement of the term of insurance, and when it is impracticable to keep the contractors' policies under review, the principal may effect a policy in respect of his contingent liability

for all work carried out for him by contractors. The premium is calculated by reference to the sums estimated to be paid to contractors during the year, subject to subsequent adjustment. The amount of the premium is governed by the extent to which the principal retains control of the work and the way in which it is done. These factors have considerable bearing on the extent of the principal's responsibility.

Other examples will come to mind, such as public authorities which employ contractors to repair roads. Each proposal must be treated on its merits.

CROSS LIABILITIES

One undertaking is, in these days, often split into several, for example, by means of a holding company and subsidiary companies. This is sometimes done for income tax and other reasons.

In such circumstances, one subsidiary may find proceedings taken against itself with another of the subsidiaries as joint defendants, or there may be proceedings between two subsidiaries. It is desired that they should be in the same position as if separate policies were issued for each, and this can be arranged by means of the following endorsement on the one policy prepared in the several names:

Memo. For the purpose of this Policy each of the parties comprising the Insured shall be considered as a separate and distinct unit and the words The Insured shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties and the Company hereby agrees to waive all rights of subrogation or action which the Company may have or acquire against any of the aforesaid parties arising out of any accident in respect of which any claim is made hereunder.

(N.B. The Insured in the Schedule of the Policy to read as follows:

..... and and each of whom shall separately be called the Insured.)

FIRE AND EXPLOSION RISKS

Claims made against the insured on account of injury or damage sustained as the result, directly or indirectly, of fire and explosion, are normally excluded from the scope of the general third party policy, but it is nearly always necessary to modify this. A builder or decorator may incur heavy liabilities as the result of fires caused by the negligence of his employees.

For cinema and theatre third party risks, it would be contrary to public policy to refuse to deal with claims which may arise out of bodily injuries caused by a panic as a result of fire or explosion, or an alarm thereof, for this is probably the principal risk connected with such undertakings. Again, it is legitimate for an hotel proprietor to require an insurance in respect of his legal liability to guests for bodily injuries consequent upon fire or explosion. So far as concerns damage to guests' property, however, a suitable fire policy may be the more satisfactory method of securing indemnity, in so far as the insurance relates to goods in trust.

Where third party fire indemnities are provided, it is sometimes desirable for the insurers to guard against consequential losses. For this reason, builders' policies are often drawn to exclude liability for damage to property being operated upon; fire damage sustained after the completion of the work undertaken is also frequently excluded.

With indemnities of this kind, it is often difficult to fix liability for fires caused by negligence, and in the past fire insurers have not always troubled to endeavour to reduce their losses by seeking to recoup themselves from those who may have been responsible for the occurrence of fires. Within recent years, however, there have been many recoveries secured from negligent third parties, and this has accounted for the increased number of proposals received.

The storage of petrol or of other inflammable liquids or gases also involves a risk of this type. Where petrol is stored in bulk on the banks of a river or canal, the risk of spreading fires consequent upon the escape of petrol, which of itself might *prima facie* amount to negligence, is not inconsiderable. Here the surroundings call for attention, since ignited petrol can cause incalculable damage to other properties and their contents on the river or canal banks, as well as to vessels moored in or proceeding along the river or canal.

Third party fire indemnities are not always confined to what may be termed heavy risks, but may be called for occasionally in such businesses as photographers when there may be a considerable risk of fire damage to property if magnesium powder is used for flashlight work because curtains or other inflammable materials may be ignited.

The examples given demonstrate the diversity of fire and explosion risks, in so far as risks upon specific premises (hotels, bulk petrol storage installations, and the like) are concerned, but probably the greatest hazard is in work carried out by the

insured away from his own premises. Building and plumbing work with the use of blow lamps on the premises of others are common examples of the kind of risk to be met. Almost all work away from the insured's own premises may give rise to such a risk, to a greater or lesser degree, and policies should be drawn accordingly.

Further reference to indemnities of this kind will be found on pages 106 and 110, under the headings of Builders and Cine-mas respectively.

For the fire and explosion extension there may be a limit applicable to any one period of insurance, and this may be the same as the limit for any one accident applicable to the normal cover. This is not the universal practice, and sometimes a higher limit may well be applied to the fire and explosion extension.

FIRST AID AND TREATMENT

Insurers are usually willing to endorse a third party (general) policy, without payment of additional premium, to provide an indemnity in respect of claims arising out of first aid and other similar treatment with a personal indemnity to members of the insured staff trained in first aid or any other qualified practitioner, provided any such person is not entitled to indemnity from any other source. The following specimen endorsement wording makes the terms of the extension clear:

Memo. Notwithstanding Exceptions (2) (a) and (2) (b) this Policy is extended to indemnify the Insured in respect of accidents as within described occurring anywhere in Great Britain due or alleged to be due to First Aid and other similar treatment made available at any of the Insured's premises provided always that any liability in respect of wrongful diagnosis is expressly excluded. Further the indemnity provided by this Memorandum shall extend to any members of the Insured's Staff trained in First Aid or Qualified Practitioner provided that such person—

- (1) is not entitled to indemnity from any other source;
- (2) shall as though such person were the Insured observe fulfil and be subject to the Terms Exceptions and Conditions so far as they can apply.

Subject otherwise to the Terms Exceptions and Conditions.

FLOOD RISKS

Many third party policies exclude claims by reason of flood. Requests for the inclusion of liability for this risk are commonly received from public authorities who are usually responsible for

sewage, drainage, and water services, and also from water undertakings who may own reservoirs or watercourses.

Insurers are generally prepared to extend third party policies to cover the insured's legal liability for accidental flooding in connection with water mains, reservoirs and the like, which necessarily form part of the plant and equipment of water supply undertakings. They are reluctant, nevertheless, to extend third party policies to provide an indemnity in respect of flooding through the provision of inadequate drainage facilities by public authorities. Public authorities, for reasons of economy or otherwise, may neglect to improve and extend drainage systems simultaneously with increased housing accommodation in the areas under their control, and it is no part of the business of insurance to guarantee the adequacy of drainage arrangements or the consequences of neglect to bring them up to date.

In England, it would be necessary to prove negligence on the part of an authority responsible for drainage before a claim could successfully be brought on account of damage caused by flooding, but in Scotland there is an absolute liability on the part of the public authorities concerned to provide proper drainage. There is little defence available, therefore, when flooding occurs.

Where the circumstances are such that extended insurance in this respect may reasonably be afforded to a public authority, or when an indemnity is given to the water department of a public authority or to any other authority responsible for water works, the premium is usually based on the limit of indemnity for any one accident or, if more convenient, on the wages paid to employees. Where it is evident that a catastrophe risk exists, the premium may be based upon both factors.

Flood risks may be proposed for contracts for the construction of reservoirs or where streams and the like have to be diverted. Likewise, cover may be required in respect of the possible collapse of dams and serious catastrophe risks may here be involved. Survey by technical experts may be an essential preliminary to the underwriting of such risks. The safeguards to be taken must be known; also the path which an escape of water would take, and what would be in the way to be damaged. A large-scale ordnance map will provide the requisite information.

FOUL BERTHING RISKS

Although by no means an invariable practice, many third party policies exclude accidents caused, directly or indirectly, by foul berthing. Such risks commonly arise in connection with

berths for vessels in tidal waters, generally in proximity to wharves.

Serious damage may be caused to a vessel by reason of an uneven bed having been provided for it to rest upon when the tide ebbs, and not only may the vessel be severely damaged but heavy claims for demurrage may be made. Goods may be dropped from a crane on to the bed of a berth and damage may be caused to a vessel which settles on it when the tide recedes. Such risks are often undertaken by marine insurers.

Where an indemnity is given, the quay, wharf or dock must be inspected by a qualified marine surveyor, whose fee is normally paid by the proposer. The berth should be level or almost level; it must not slope too acutely from the wharfside, particularly if it is a mud berth because a vessel may slide or skid on the berth; and the berth must be kept clear and the general upkeep must be satisfactory. The underwriter needs to know how often the levels of the berth are tested, and the tests should be made by a competent surveyor. It must also be confirmed that the berth is examined at reasonable intervals to make sure that there are no obstructions to cause damage to a vessel when it settles down. There must be nothing protruding from the face of the wharf, since if there is, a vessel may be held up while the tide is falling or it may be pinned down during a rising tide.

A fixed premium for the risk is usually charged, depending on the limit of indemnity required for any one accident.

JOINT POLICIES

Ordinarily, a third party policy is drawn to provide an indemnity to one party in respect of that party's liability at law for accidents to the persons or property of third parties. In some instances, however, as, for example, where work is performed for a second party, an indemnity may be afforded in two or even more names. The admission of more than one party to the protection afforded by the indemnity may not only result in more claims falling to be dealt with under the policy, but in addition may involve increased liability for the payment of legal and other costs.

Public authorities, for example, may require a contractor to effect a third party insurance in the joint names of the contractor and the public authority. The intention is to ensure that in the event of any claim arising out of the work being made against the public authority that authority will, without premium expenditure on its own account, have the benefit of the protection of the contractor's policy. It is doubtful, how-

ever, whether the authority always achieves its object by following this course, for by so doing it becomes identified with the contractor *vis-à-vis* the policy as "the insured" and, as such, is subject to the terms and conditions of the policy. Consequently, unless special provision is made in the wording of the policy, a common law claim made by an employee of the contractor against the authority would not necessarily fall within the strict terms of the policy since such policies invariably exclude claims brought by the insured's employees. To overcome this it is wise to endorse the policy in order to make it clear that there is no intention to exclude claims brought at common law by the employees of one insured against the other. This is often more simply met by extending the policy by endorsement to indemnify the authority as though the authority were the insured. In any event, the object of the joint insurance is to ensure that both parties are protected in respect of their liabilities at common law to the employees of the other (to whom respectively the employees stand in the position of third parties) as well as to members of the public not in the service of either. (See also *Cross Liabilities*, p. 89.)

The precaution of requiring the authority to allow the insurers to handle all claims for which they may have assumed liability under the policy should not be overlooked.

Except for public authorities (where an additional premium is not always charged), the admission of additional parties to the indemnity afforded by the policy necessitates the payment of an extra premium, if only on account of the extra legal and other costs which may be incurred in the settlement of claims.

LIABILITY UNDER CONTRACT

Third party policies normally exclude liability assumed by the insured under any contract or agreement to indemnify, unless such liability would have attached to the insured notwithstanding such agreement. The reason is that were such liabilities to form the subject of indemnity under the policy, the insurers would not know the extent of their obligations; it might be difficult to prevent the insured from compromising claims by the admission of liability, or by contracting to indemnify an injured party. The exclusion may, however, be modified in special circumstances when the insurers have been acquainted with the terms of the indemnity which has been given (for which purpose a copy of the wording of the contract must be obtained) and have expressed their willingness to provide indemnity under the policy.

It would often be impracticable to extend a third party policy to indemnify the insured in respect of the whole of his assumed liability and it is usual, therefore, merely to provide that the indemnity afforded by the policy shall not be prejudiced by the fact that the insured has entered into a particular agreement. It is a common practice to endorse the policy to this effect, in which event the indemnity still relates only to accidents as described in the policy. Apart, therefore, from the waiving of the contractual liability exclusion for a particular contract, the terms, exceptions and conditions of the policy remain unaffected.

However, difficulties are to be expected when claims arise, unless provision is made for the insurers to deal with all claims, irrespective of the party to the contract against whom they are in the first instance brought. Frequently, it is advisable to obtain an undertaking to this effect from the party to whom the indemnity is being given.

Nevertheless, many indemnities given by contractors in the course of their work and by others in order to secure facilities which they may require on, under, or over the premises of others, go far beyond the kind of indemnity afforded by third party policies. The indemnities may include reference to financial penalties for time loss, fines and proceedings, as well as accidents to employees, all of which are outside the scope of a third party policy.

Railways and canal undertakings generally take indemnities of one kind or another from those who require facilities, such as railway sidings, storage space in goods yards, or even consent to erect structures, such as coal order offices, on the premises of the undertakings. Such indemnities are often very wide in their terms, and far beyond the scope of the normal third party policy. For example, the relevant clause may be so worded as "to relieve the.....company from and against all claims, losses, or liability whatsoever. . . ."

Third party policies, however, are designed to afford an indemnity in respect of liability for "accidents", and as a rule insurers are not prepared to extend their contracts beyond this. Such policies, too, are concerned primarily with liability for such accidents as cause bodily injury, illness, or damage to property.

When some contracts are arranged standard conditions of contract are applicable, for example, the I.Mech.E./I.E.E. Model Form of General Conditions of Contract (Home—with Erection) and the Royal Institute of British Architects Schedule of Con-

ditions of Building Contract. An extract from the latter is given below:

Extract from A Form of Agreement and Schedule of Conditions for Building Contracts. Royal Institute of British Architects. July, 1939 (Revised 1952).

Injury to persons and property

14.—(a) **Injury to Persons.** The Contractor shall be solely liable for and shall indemnify the Employer in respect of any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Works, unless due to any act or neglect of the Employer or of any person for whom the Employer is responsible.

(b) **Injury to Property.** Except for such loss or damage by fire as is at the risk of the Employer under clause 15 (b) [B] of these Conditions the Contractor shall be liable for and shall indemnify the Employer against any loss, liability, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or in the course of or by reason of the execution of the Works, and provided always that the same is due to any negligence, omission or default of the Contractor, his servants or agents or of any sub-contractor.

15.—(a) Without prejudice to his liability to indemnify the Employer under clause 14 hereof, the Contractor shall effect or shall cause any sub-contractor to effect such insurances (including insurance against third party fire risk) as may be specifically required by the Bills of Quantities and shall produce or cause such sub-contractor to produce as the case may be the relevant policy or policies and premium receipts as and when required by the Architect; should the Contractor make default in so doing, the Employer may insure against any risk with respect to which the default shall have occurred and may deduct the premiums paid from any monies due or to become due to the Contractor.

(b) [A]. The Contractor shall in the joint names of the Employer and Contractor insure against loss and damage by fire for the full value thereof (plus 8½ per cent. to cover Architect's and Surveyor's fees) all work executed and all unfix'd materials and goods upon the site but excluding plant, tools and equipment and shall keep such work, materials and goods so insured until the works are delivered up; such insurance shall be with a company or companies approved by the Architect and the Contractor shall deposit with him the policies and premium receipts; should the Contractor make default the Employer may insure as aforesaid and deduct the premiums paid from any monies due or to become due to the Contractor.

PASSENGER LIFTS AND CRANES

The ordinary general third party policy form excludes liability for accidents caused directly or indirectly by or trace-

able to the use of passenger lifts and cranes. The reason for this is that specific insurances may be effected in respect of such machines which, having regard to the peculiar hazards involved, call for special treatment. (See Chapter X.)

Certain risks, notably iron and steel works, and others related to the heavy trades, must of necessity have a considerable amount of lifting machinery upon their premises to make it possible for materials to be handled efficiently and economically. However, few third parties visit the premises, and the risk of accidents to such persons may be regarded as incidental to the work in respect of which the general third party policy is issued. The important subject of inspections is not overlooked, and where the apparatus is regularly inspected for defects by a skilled maintenance staff, there is often little justification for charging a premium over and above that provided by the percentage rate charged upon the wages, or the flat premium for the risk.

SANITATION RISKS

Some general third party policies and many property owners' indemnities contain a specific exclusion of claims on account of illness caused by defective sanitation. Whether illness contracted in such circumstances falls within the meaning of "an accident" is open to doubt, but it is reasonable to assume that the wording of a third party policy which does not specifically exclude sanitation claims might be wide enough to admit of such claims being carried to a successful conclusion.

When this risk is to be included within the scope of an insurance, whether in respect of private or business premises, enquiries need to be made as to the age, type, and condition of the drains and other sanitary apparatus. Provision for their periodical inspection by a competent person is essential.

Defective sanitation may affect a large number of persons at a time. In consequence, insurers often seek to limit their liability to a specified amount in any one period of insurance.

The usual endorsement wording is as follows:

"This Policy is extended, subject to its Terms Exceptions and Conditions, to indemnify the Insured in respect of claims for illness or other bodily injury caused or alleged to have been caused by defective sanitary arrangements the liability of the Company being limited to £..... in any Period of Insurance in addition to costs and expenses as within defined."

SUB-CONTRACTORS

When a contractor enters into a contract, he frequently has occasion to employ the services of sub-contractors to undertake certain portions of the work to be performed. This being so, there is the possibility that an accident, caused by a sub-contractor's workman, may result in an action for damages against the principal alone, or that the principal may find himself joined as a defendant with the sub-contractor. In either event, the principal has to bear certain law costs in his own defence, which, even if the claim fails, he may be unable to recover. Further, the principal is in an unfortunate position, for a claimant may reasonably consider him to be of greater substance than a relatively small sub-contractor and, in consequence, will tend to press a claim against him with better hope of recovery if judgment is obtained.

When a principal desires to effect an indemnity against such claims, this cover is afforded, provided that he undertakes to pay a premium on the wages paid to the employees of sub-contractors, in the same manner as he does on the wages paid to his immediate employees. If, as sometimes happens, the principal has no knowledge of the wages disbursements of his sub-contractors, the premium can be charged on an agreed proportion of the sums paid to sub-contractors.

Liability for accidents to sub-contractors' employees is within the scope of the third party (general) policy, since they are third parties and not under a contract of service with the contractor.

SUBSIDENCE

An indemnity may be required against liability for subsidence, vibration or the withdrawal or weakening of support, particularly for building and engineering contractors. The risk is heavy, and much depends on the reputation of the contractor with his experience of the type of work to be undertaken.

The main causes of damage by vibration are blasting and the driving of piles. Vibration is inevitable, and it is necessary to exclude liability for such damage as is unavoidable; it is a trade risk and the contractor should make provision in his estimate for the cost of putting it right.

The type of subsoil is relevant, and it is known that sand with strips of clay is particularly susceptible in wet weather. The continuous pumping out of water and silt from excavations tends to disturb the stability of the surrounding land, and a number of dangerous settlements to buildings have been known to have occurred from this cause.

The depth of excavations in relation to the foundations of adjoining buildings has to be considered; also, the state of repair of adjacent buildings is material to the assessment of the risk. If the excavation breaks the seal of the water table underground water will flow into a trench instead of affording the previous support. When water flows into an excavation it usually takes with it some of the subsoil. Even where there are merely service pipes being laid, with possibly many miles of trenching, there is a subsidence risk, although it may not be so evident as where there are deep excavations preparatory to the erection of huge buildings, as has recently occurred on bomb-damaged sites in London and other large centres.

VEHICLES

Liability for accidents caused by mechanically-propelled vehicles is excluded, and sometimes this reads "any liability arising under any Road Traffic Act or other legislation governing the insurance of vehicles on public roads". This latter wording hardly goes far enough, for the intention is to exclude from the general public liability policy all liabilities which should be dealt with under specific insurances.

Some concession is at times made when the use of vehicles is confined to private premises or sites, but there is some variety of opinion among public liability underwriters as to whether vehicles licensed for road use should be excluded entirely or only when they are, in fact, in use on the road.

WATER POLLUTION

Effluent is frequently discharged into public sewers or directly into waterways. If the effluent has not been suitably treated before discharge, damage may be caused to fish life or the effluent may be taken in with the water by a firm lower down a river with resultant damage to machinery or to materials undergoing a trade process.

When an indemnity is provided, it should be limited to liability for *accident*, such as the breakdown of plant which normally renders the effluent harmless, or the effluent may escape before treatment through an accident.

WORK AWAY FROM THE PREMISES

Frequently work is undertaken away from the insured's premises, and provision must be made for this, so that the policy in this respect is "tailor-made" to provide adequate protection.

Builders and contractors always need this extension because most of their work is undertaken at customers' premises or elsewhere (see also p. 106), but in some trades such an extension has in the past been overlooked. For example, a firm employed commercial travellers but their activities, apart from this, were limited to their own factory. The firm summoned one of these travellers on the telephone at a customer's premises, and as he walked briskly to the telephone between the aisles in the showroom, he failed to observe an old man who was putting some cloth away. He stepped on the man's leg and broke it; medical complications followed the fracture, and the old man lost his job. The claim was not within the scope of the third party policy because no extension had been arranged.

The extension is required for schools because "away" games are played, pupils are taken on visits to places of interest, and summer camps are arranged. A music shop may employ piano tuners, who carry out their work in various customers' homes. Photographers attend weddings and other functions and need an indemnity against liability for accidents wherever photographs are taken, including the fire and explosion extension.

BASES OF RATING

Underwriters are free to use any methods of rating which appear to them to be the most suitable, for the many and varied types of risks offered to them, but the usual bases are:

(a) **Wages.** This is the most common basis of premium calculation, and generally gives a fair indication of the relative third party risks of otherwise similar undertakings. For example, it may reasonably be assumed that a builder expending £5,000 in wages during the year has a proportionately greater third party risk than a builder expending only £1,000, and, other things being equal, this comparison is true in other trades where there is work away from the insured's own premises. Certainly, departures from the ordinary work incidental to a particular trade must be observed and differential ratings applied accordingly. To carry the example of the builder further, it may be that the smaller firm undertakes a considerable amount of jobbing work, where there are often greater risks of injury to third parties or damage to their property, and such work should be more highly rated. Larger firms frequently do not undertake jobbing work, and consequently have the advantage of the lower rate throughout, subject to a favourable past claims experience.

The usual policy makes provision for the adjustment of premiums on any desired basis (see p. 75). By this means increases in the number of employees engaged by the insured, with the consequent increase in wages expenditure, need not normally be notified to the insurers at the time of the alteration, since insurers are content to obtain the excess premium upon adjustment at the end of the term of insurance.

(b) Output, or Turnover. The third party risk connected with certain businesses is not always adequately reflected in the wages disbursed to employees, and, notably when food risks are to be included, the risk is better estimated by reference to turnover. This is sound practice, for example, with jam manufacturers, breweries, patent medicine proprietors and others, where output or turnover gives some measure of the increase or decrease in the risk.

(c) Receipts. Somewhat similar to the last basis is that of receipts, for example, from persons patronising amusements, such as are to be found in permanent fair grounds. The more persons paying fares or paying for admission, the greater the third party risk and the greater the premium obtained by this method. Sports arenas, attracting large attendances, may also be rated on this basis.

(d) Attendance. It may be more convenient, especially when alternative prices are charged at different times, to compute the premium at a percentage rate on the number of visitors. This method, too, may be adopted for athletic clubs which draw large numbers of persons. The more popular matches there are, the greater the attendance upon which the premium is based, and this ensures a fair means of premium calculation in relation to the risk.

(e) Seating Capacity. Third party premiums for theatres, cinemas, and halls are frequently based upon seating capacity, with or without an additional percentage charge on the wages paid to employees in respect of incidental work, such as that connected with a café or other undertaking run in conjunction with the main risk.

(f) Limit of Indemnity. Where the limit of indemnity is unusually large as, for example, when fire claims are to be expected, insurers may insist upon basing or partly basing their premium on the limit of indemnity. This method is usually adopted as a means of discouraging limits far beyond the capacity of normal reinsurance facilities.

EXCESSES

Large firms are frequently in a position to carry a part of the risk themselves and then expect a reduction in premium. While there are objections from the insurers' point of view to excesses in third party policies, reductions on account of the insured bearing the first amount of each and every claim are by no means uncommon.

Excesses have the advantage of relieving the insurers of a large number of trifling claims which take up considerable time in investigation and settlement. The disadvantage lies in the fact that there are frequently no means of requiring the insured to entrust to the insurers, from the outset, the conduct of claims which may exceed the amount of the excess, because the insured may contend that he can reasonably expect to settle the claim, on his own account, for a lower figure. Thus, the insurers may be faced with the final settlement of a claim which they might have completed satisfactorily at a much smaller figure had it been left to their judgment throughout. It is possible to follow the practice in the motor department of requiring all claims to be settled by the insurers, subject to reimbursement by the insured of the amount of the excess, but, by this method, the main advantage—the disposal of small claims without the cost of the insurers' investigation—is lost.

For some risks a compulsory substantial excess is imposed as, for example, an indemnity in respect of liability for damage to property caused by vibration or by the withdrawal or weakening of support (see p. 98). The excess should apply to the contract as a whole.

CHAPTER VIII

GENERAL THIRD PARTY INSURANCE (III)

(Underwriting)

In this chapter notes are given on the usual types of third party risks proposed for insurance, with the exception of those discussed in separate chapters. The principal sources of accidents are indicated as well as the type of indemnity afforded, and the bases upon which premiums are normally charged.

In each instance the risk undertaken is that of accidental bodily injury and accidental damage to the property of third parties, so that premiums charged are expected to reflect the extent to which third parties are likely to be affected by the activities for which an indemnity is required.

AGRICULTURAL SHOWS

Agricultural shows take place mainly in country towns. The type and intention of the show must be ascertained and whether it is to be held in a permanent or temporary structure. If in the former, the suitability of the building for the purpose has to be considered, and if in the latter, the qualifications of the party erecting tents or stands must be investigated. The probable number of visitors ought to be known, and what arrangements are to be made for their safety, according to the type of animals or plant to be exhibited. Whether a charge is to be made for admission is material, with a full description of the procedure to be adopted. If food or drink is to be supplied on the premises or grounds, the underwriter needs to know whether the promoters of the show are responsible, or whether the catering has been placed in other hands. Premiums are usually based upon the number of visitors, or alternatively upon gate receipts.

Car parks are often provided and steps should be taken to ensure that disclaimers of liability for cars and their contents are prominently displayed and that such disclaimers are included in the receipts given to owners. Such tickets should be produced in exchange for the cars. Supervision is important; also, the suitability of the surface upon which the cars are to be parked.

AMUSEMENTS

The risk connected with the individual items which make up an amusement park or fun fair varies considerably, and while some of the side shows are comparatively harmless, others may involve a catastrophe risk, which must be dealt with in the premium charged. The type of person at such amusements often leaves something to be desired; an unruly element usually creeps in at one time or another. The adequacy and suitability of the premises for the amusements need to be considered, and if more than one floor is used for the purpose, the stability of the buildings must be investigated. Children are attracted to such amusements, particularly if admission to the park is free, and the surveyor should draw attention to any features which appear to increase the risk of accidents, so far as children are concerned. Premiums may be based upon the gate receipts, or receipts from the individual amusements which, in practice, are frequently the property of individuals and not of the promoters of the amusement park or fun fair. Experience has shown that even for the smallest of these amusements, a substantial minimum premium is necessary if the risks are to be undertaken profitably. If a joint indemnity to the owners of the undertaking and to the owners of the individual items, is to be given, an additional premium is justified.

Frequently, the amusement park proprietor owns but few of the amusements and it is not unusual that a condition of the letting of the site to a side show proprietor requires him to indemnify the lessor in respect of any claim which may be made against him.

BILLPOSTING AND HOARDINGS

The risk depends upon the size and situation of the hoardings. Details must be obtained of the number of hoardings to be dealt with under the policy with their individual dimensions; also the situations of the billposting stations, and by whom and when the hoardings were erected, with particular regard to the qualifications of the party who undertook the work. The hoardings must be regularly inspected by some competent and independent workman, whose evidence would be of value should a claim arise and a case be taken to court.

The billposting risk itself is mainly connected with damage to clothing by falling paste or sticky posters, and while this part of the risk is probably best rated on a wages basis, the risk of the hoardings themselves is usually charged on the superficial area of the separate hoardings. High winds, coupled with neglect,

may cause hoardings to fall, and, if they are in a busy street, pedestrians and others may be injured.

BOOT AND SHOE MANUFACTURERS

Injuries to purchasers by defects in boots and shoes are not infrequent and claims through protruding nails which pierce the foot of the wearer and set up blood poisoning, or dyes which affect the skin and cause dermatitis, are well known.

Subject to a satisfactory past experience, indemnities in respect of such claims are provided, and premiums are as a rule regulated by reference to turnover.

BREWERIES

Breweries differ little from other manufacturing premises from the third party standpoint, although lifting machinery, such as external teagles, is often a special feature.

The risk of illness or injury caused by foreign or deleterious matter contained in the insured's products is often covered. The rate of premium is as a rule charged on the turnover expressed in money or on the number of gallons or barrels of beer produced. The possibility of accidents by the bursting of bottles away from the brewery premises should not be overlooked and if this risk is to be covered it should be so stated in the policy.

Most breweries own "tied" houses which may be managed by the brewery company's own employees, or may be let out to others under contract. The liabilities are then not necessarily the same and differential rates may be justified. In either event, there is the risk of accidents arising out of the delivery of casks and the like beyond the carriageway; there are also the hazards inseparable from the use of openings in the pavement with the consequent risk to other users.

BRIDGE CONSTRUCTION

Bridge construction may take many forms. For example, the bridge may be needed to carry railway traffic over a highway, or to carry a highway over a railway, and in both circumstances the road/or railway line may continue to be used during the operations. Other bridges may be constructed over rivers and waterways which cannot generally be closed while the work is in progress.

Bridge construction carries a heavy third party risk, particularly when the work is undertaken without more than partial interference with normal traffic, whether under or over the work in progress.

Where reconstruction of an existing bridge over which a railway passes is undertaken, there is a catastrophe risk, which can be estimated only by a thorough inspection of the work in progress by a skilled surveyor, coupled with an intelligent grasp of the related plans and specifications. It is necessary to obtain details of the method of performance of the work, the steps to be taken for the safety of traffic (whether pedestrian or otherwise) passing over or under the work in progress, and in this connection there is the risk of subsidence. The detailed plans should indicate the results obtained from experimental bore holes as to the type of subsoils which are to retain the abutments, and the presence of neighbouring watercourses or shifting sands at or below ground level requires investigation, together with the methods proposed to overcome the inevitable engineering difficulties.

Pile driving needs consideration since it has been known to cause the collapse of buildings some distance away from the site of the work, particularly as certain subsoils carry the pile driving shocks over a larger area than others. While the policy may exclude damage to surrounding structures, the normal exclusion in this respect does not always extend to bodily injuries caused by the collapse of buildings, and large sums may become payable on account of persons killed or injured by this means.

The underwriter must be satisfied with the competence of the engineers who are to undertake the work. The workmen to be employed must be experienced in the type of work they are to perform.

Premiums are usually calculated at a rate per cent. upon wages paid, but it may be necessary to charge a special premium for any maintenance period during which, subsequent to the construction, the contractor may remain liable for accidents arising out of the works.

BUILDERS

Builders' risks differ considerably, and the first consideration is the type of work undertaken. Builders vary from the local man, who merely undertakes jobbing work, to larger firms undertaking the erection of houses under housing schemes, and to larger ones still, who describe themselves as builders and contractors, and whose work may not be confined to the erection even of large premises in towns but may also include road work and the laying of sewers and drains. The fullest details of the work carried out are essential, and attention has to be given to the usual sites of operations. If work is usually carried out

in large towns, the risk of accidents may be greater than with housing schemes in country districts or jobbing work at small private houses. The proposer's tackle and apparatus must be known to be in satisfactory condition. In this respect, the financial standing of the firm has some bearing, for a firm in financial difficulties will probably not replace its tackle until some part has broken down, which, at that time, may possibly be the cause of injuries to a third party.

When firms which describe themselves as builders and contractors make proposals for third party insurance, some insurers take the view that separate policies should be issued in connection with each contract, in order that an adequate rate of premium may be obtained. This procedure is not always possible in practice.

Premiums are usually based upon the wages paid to direct employees, and if an indemnity in respect of claims caused by the negligence of sub-contractors' employees is also to be given, further premium is required based upon the wages paid to sub-contractors' employees or, if this cannot be ascertained, upon a percentage of the contract price. In order to avoid acceptance of an insurance where the work carried out may pass beyond the limits expected by the insurers, it is usual for an endorsement to be placed upon the policy excluding work at an excessive height from the ground, or for which considerable machinery is used, unless additional premium is paid.

The third party policy, in its ordinary terms, is frequently insufficient in its scope for builders, who will require an indemnity in respect of fire and explosion risks arising out of their work. Where such an indemnity is provided, it is not intended to do away with the necessity for fire insurance on the buildings in course of erection, and it is made clear that only fires caused by neglect on the part of the insured or his employees will be the subject of indemnity under the policy. Damage to property in the custody or under the control of the insured is generally excluded.

Jobbing builders and plumbers usually desire their policies extended in respect of fire and explosion risks, and this is normally effected by a loading of the rate charged upon the wages disbursed. It is usual to exclude:

- (a) Damage to property belonging to the insured, or in his custody or control.
- (b) Damage to buildings in course of erection.
- (c) Damage to property on the insured's own premises.
- (d) Claims on account of fires occurring after completion

of the work upon which the insured's workmen may have been engaged, in or on the premises concerned.

In connection with fire and explosion risks substantial limits of indemnity are frequently sought, in view of the possible catastrophe hazard should a fire, negligently caused, spread to surrounding properties. (See Chapter VII.)

Third party insurances for building contractors at times relate to one particular contract only, and the cover may run from, say, six months to six years or even longer. A quotation is usually requested at the "tender" stage, and wide protection is needed, according to the type of contract. Often, too, the third party insurance is dealt with in conjunction with a contractors' "all risks" enquiry. Where standard conditions of contract are applicable they will often be those of the I.Mech.E./I.E.E. Model Form or the R.I.B.A. Schedule of Conditions of Building Contractors—see p. 96. If the work is to be carried out overseas, a wide variety of forms of contract may be concerned.

The underwriter will need to see the general conditions of contract, the form of tender, possibly the bill of quantities, with site, ground and elevation plans. The contract price and the period of the contract, as well as the maintenance period, are material considerations. A proposal form is rarely used, but a special questionnaire may be issued, so that the insurers may know whether the proposer is the principal contractor (and if not, his name), whether other contractors are working on the site, whether the proposer will employ sub-contractors (with details) with particulars of the proposer's own employees, what plant and machinery will be used, and the extent to which explosives will be employed.

The policy will be specially drafted to cover certain contractual liabilities, subject to the terms, exceptions and conditions of the policy, fire and explosion risks, and possibly subsidence and other particular hazards.

BULK PETROL STORAGE INSTALLATIONS

Such risks call for consideration in the light of a surveyor's report which should have particular regard to the possible consequences of the escape of petrol. Many such installations, known as "ocean installations", are situated on the banks of estuaries and rivers. Petrol may escape and reach the waterway and in the event of any considerable quantity becoming ignited, the subsequent claims, by reason of damage to vessels, may be heavy. Cases have been known where, because of the escape of petrol within the installation compound itself, the petrol has

seeped down through the sandy base only to reappear on the surface of the ground some distance from the compound, with the consequent risk of fire on the premises of others.

Apart from the fire and explosion risks, the hazard is not generally great, unless it is desired to make provision for foul berthing risks, when a specialist report from a marine surveyor is required.

CAFÉS

These risks are dealt with under Restaurants, see p. 122.

CATTLE FOOD MANUFACTURERS

The only special risk under this heading relates to claims arising out of defects or alleged defects in the firm's products. Cattle foods are often supplied to the owners of pedigree herds of great value, and illness or even death caused to such animals may involve substantial financial liabilities. It does not follow that all illness attributable to the insured's products will necessarily involve the insured in liability, for failure to observe instructions as to feeding or even careless storage may be the cause. Nevertheless, claims may be troublesome and substantial premiums, based on turnover, are required.

CHEMISTS—RETAIL

The retail shop risk differs but little from that of other retail shops, except that it is usually necessary to provide for the delivery of medicines and other goods by hand or cycle. The most serious risk is the incorrect making up of prescriptions, but this is a risk which is not covered by the ordinary form of policy. (See Chapter XIII.)

CHEMISTS—WHOLESALE AND MANUFACTURING

Apart from the risk on the insured's own premises, which is generally little different from that of any other factory premises, the principal hazard lies in the preparation and bottling or boxing of the commodities sold to the public. From their nature, medicines may give rise to serious third party claims and a large proportion of them are in practice caused by carelessness in labelling. Many firms of manufacturing chemists prepare medicines for others which are not sold under their own name, and it may be that indemnities will have been given to the proprietor of the prescription in respect of claims arising out of defects and mistakes. Such indemnities may need special treatment.

Wholesalers' liabilities largely arise out of claims originally made against the retailer who may seek to recover from the wholesaler who, in turn, may seek indemnity from the manufacturer. The defect alleged in the products, however, may have been caused subsequent to manufacture by storage in unsuitable conditions or by the goods having been kept in stock too long. Manufacturers can usually tell from the coding on their labels when their products were made, and they know from their books when they left their premises.

CHURCHES

Well-maintained churches themselves are nominal risks, although in the event of the collapse of a part of the structure, a considerable number of persons may be involved. Premiums are charged according to seating capacity and the limit of indemnity selected.

Proposals from church authorities frequently extend to church halls and other premises used for Sunday school purposes. For church halls, it is necessary to ascertain the extent to which they are used, the type of use, and the seating capacity. Lettings to outsiders may involve an increased risk, especially where large halls are used for political meetings, while dances and displays may attract large numbers of persons to the premises. The adequacy and suitability of exits are reflected in the premiums charged, which depend upon the merits of each proposal. If cinematograph performances are permitted, a policy on the lines of that issued for cinemas may be required.

CINEMAS

There is always the possibility of minor bodily injury claims and of those for damage to clothing by seating, but the principal risk to be considered is the possibility of panic by fire or an alarm of fire. The ordinary third party policy excludes accidents attributable, directly or indirectly, to fire or explosion, and partly for this reason a special form of policy has been prepared for cinema risks. The insurers require to be satisfied that adequate exits exist, and further information required is dealt with on p. 89. The risk of claims from defective hoardings away from a cinema is usually included. Other undertakings, such as dance halls and cafés, are often managed in association with the cinema undertaking, and policies are frequently arranged to deal with the whole of the third party risks with which the combined management is concerned, including food and drink risks. Premiums are based primarily upon the limit of indem-

nity required and the seating capacity, but additional premiums are charged for associated undertakings, calculated at a percentage rate on the total wages paid to employees connected with those undertakings. An indemnity is sometimes required in respect of accidents arising out of the transit of cinematograph films and for this a fixed premium, varying with the limit of indemnity selected, is often required. Occasionally, an indemnity for damage to surrounding property caused by fire originating in the cinema is demanded, when a further fixed additional premium, varying only with the limit of indemnity required, is charged. Such an extension does not relate to fire damage to property contained within the insured's own premises.

CLUBS

Such risks are divisible into residential clubs, very similar from the third party point of view to hotels, and other clubs often founded for social or sports interests. Attention must be paid to the premises and ground risks, with special reference to stand accommodation where such exists; also, to the extent of food risks, in the light of the storage facilities for food left over, because sometimes the arrangements therefor are unsatisfactory. For sports clubs the playing away risk should not be overlooked and the policy should extend to indemnify the club wherever its members may be playing on its behalf as members of the club.

In addition to an indemnity to the club, policies are frequently issued to provide an indemnity to individual members in respect of their personal liability, either including or excluding "member-to-member" liability.

CONTRACTORS

This term is too vague to be accepted on a third party proposal form without explanation. The work undertaken by contractors may range from that of a small builder to that of a firm undertaking contracts involving heavy work, such as the construction of bridges, reservoirs or the erection of chimney stacks to a great height. Careful investigation of the work undertaken is therefore essential, and the proposal must be dealt with on the lines indicated under the headings of Builders (see p. 106) and Road Contractors (see p. 122) respectively. If the work were special, such as the construction of a dam or reservoir, the proposal would call for particular attention, in the light of all the circumstances disclosed by the surveyor's report with special reference to flooding and similar risks.

DOMESTIC APPLIANCE MANUFACTURERS

There is an increasing tendency for such manufacturers to seek cover in respect of their liability for accidents arising out of defects or alleged defects in their products. The frequency with which claims arise out of the use or misuse of electrical equipment used in the home emphasises the need for such indemnities.

Indemnities fall naturally into two classes, those in respect of manually-operated equipment and those for machines needing electric power, such as electric washing machines, refrigerators and water heaters. The mere fact that electricity is used, often in close proximity to water, involves a particular risk of accident through defects in the apparatus or cable connections. Such accidents may often be caused by wear and tear, but claims have, nevertheless, to be dealt with, each of which involves the insurer in expense, although in fact no compensation may be paid.

DROVERS

Drovers' proposals are made by reason of the risks inseparable from the driving of sheep and cattle along public highways. The neighbourhood in which drovers operate affects the risk, and premiums are charged on a per capita basis, varying with the limit of indemnity selected. Such indemnities are freely provided in connection with Farmers' Indemnities (see p. 177).

DYERS AND CLEANERS

The risk at receiving depôts is usually slight, except perhaps where cleaning is undertaken by mechanical devices in shop windows. In that event, fire and explosion risks similar to those at factory premises where dyeing and cleaning are undertaken may arise. There are fire and explosion risks attaching to the use of spirits for cleaning.

Occasionally, requests are received to extend policies to apply to the insured's legal liability for loss of or damage to customers' property while in the custody of the insured. Liability for fire damage is generally covered under a fire policy, but the liability for loss from other causes, especially where limited by special contract, is sometimes covered under third party policies, excluding the risk of damage through the treatment of the property.

ELECTRONIC, RADIO AND TELEVISION FACTORIES

The public liability risk is the normal one for a factory, apart from products liability which is dealt with in Chapter IX.

Some factories are mainly assembly shops with the parts bought from outside firms while other firms manufacture their components. There is a plastics risk with the accompanying fire and explosion hazards; also, the usual packing risk.

Since the industries are somewhat novel a large number of conducted parties may be expected, and they may include young students. It is necessary to know what precautions are taken and whether or not a disclaimer of liability is secured by means of a signed card, although this is not of much value for minors. (The risks associated with conducted parties apply to many kinds of undertaking and the enquiries suggested should then always be made.)

The customary basis of rating is the wages paid.

ENGINEERS

The work undertaken by engineers is so varied that it is impracticable to deal in detail with the various types of risks which may be offered to third party insurers. Contracts may range from the erection of steel work for a new building, to similar work for aerials for radio or television transmitting stations, or they may take the form of the installation of safes, heavy electrical plant, or other power units, such as dynamos, turbines or converters.

Each proposal must be treated on its merits, according to the extent to which members of the public, *including the employees of others*, may come in contact with the work while it is in progress, and also according to the risks of damage to surrounding or adjoining property. Where heavy units, such as safes or strongrooms, are installed, other than in specially-constructed basements, the risk of damage to structures beneath needs investigation.

Further general principles to be observed in the underwriting of engineering third party risks are outlined under the heading of Bridge Construction (see p. 105), which is a general example.

FACTORIES

The risk with factories depends on the situation of the premises (e.g., neglect to repair buildings or walls may give rise to accidents to passers-by) and on the number of persons who frequent the premises. It is possible to have a proposal for a factory covering many acres of ground, for which the third party risk may be far less than that for one very much smaller because very few persons may have occasion or be permitted to visit the

large premises, while many members of the public may have a right of way through the smaller premises. Postmen, meter readers, railway and other transport undertaking employees visit most factory premises and, in relation to the occupier, they are third parties.

It is therefore impossible to lay down hard and fast rules for dealing with factory risks, and it remains for the surveyor to inform the underwriter as to the degree of risk involved. The extent to which hoists and cranes are used calls for attention, if liability for accidents connected with them is to be included in the indemnity.

There may be a "trade effluent" risk associated with some factories because trade waste must be disposed of and the easiest way is to discharge such trade waste into a nearby river or canal. Harmful chemicals and even the mass effect of household detergents may cause concern, and the underwriter must consider each risk, particularly in the light of the Rivers (Prevention of Pollution) Act, 1951—see p. 56.

FACTORY CLINICS AND FIRST AID POSTS

Social progress during recent decades has led to an increasing number of factories of various kinds installing clinics and first aid posts to deal speedily with accidents to employees happening upon the employer's premises. Welfare centres also exist for such purposes as dentistry and chiropody, while provision may be made for the custody of children whose mothers may be employed in the factory. These factors necessitate particular enquiries by the third party surveyor, so that the insurers may be aware of the extent of the additional risk. Particulars should be obtained of the number and qualifications of the staff engaged on such work, while a statement of the number of attendances for each kind of treatment is helpful in assessing the risk. The standard type of policy issued for a factory may need modification to make provision for treatment risks which would normally be excluded. Sometimes, too, it may be desired to provide under a policy extension for an indemnity to such staff as nurses, not entitled to indemnity from any other source, in respect of their personal liabilities for the consequences of their professional negligence. (See also p. 118.)

FIREWORK MANUFACTURERS

The premises risks of firework manufacturers are generally isolated from others; hence the risk of fire and explosion caus-

ing injury to third parties or damage to their property is not so great as might be thought. Moreover, their work is carried on under regulations laid down by legislation. There may, however, be a considerable risk of fire or explosion and a risk of injury to onlookers at fairs and exhibitions where fireworks are let off in public. Firework displays are frequently organised and managed by manufacturers and in consideration of the additional risk of accidents happening away from their premises, a substantial rate per cent. is generally charged upon the wages paid for work away from such premises. Accidents caused by falling rocket sticks are not infrequent and sometimes result in fatal injuries.

FLOUR MILLS

There is little difference between flour milling risks and many others of the factory and manufacturing type. Attention needs to be paid, however, to the risk of dust explosions with the consequent injuries to third parties and damage to their property, especially when the mill is in close proximity to other premises. The spreading fire risk, which may or may not be associated with explosion, needs consideration. There may be a risk of accidents associated with external hoists and teagles.

Indemnities are sometimes required in respect of claims arising out of the flour and other commodities handled. Such risks are generally rated on a turnover basis. Occasionally, waterside premises may involve foul berthing hazards which require careful treatment.

FURRIERS

The third party hazard for furriers' shops is similar to that of many other retail premises and does not call for special comment. The risk, however, of claims arising out of goods sold may be considerable, as it is by no means unusual for dermatitis contracted by customers to be attributed to defects in the furs sold. Dermatitis may be caused by the skins themselves, by the dyes used in their preparation, or by reason of the process of cleaning adopted. The sale of secondhand furs may be more productive of such claims than the sale of new skins, for there is the possibility that some disease of the previous owner may be passed on to the purchaser of the secondhand article. In view of past experience, there is a general reluctance to cover the products liability for this trade, except in special circumstances.

GARAGES

Special policies are provided by motor insurers for dealing with motor garages which are operated as a separate trade, and their consideration, therefore, is outside the scope of this book. There are, however, garages attached to hotels, sports grounds, and similar undertakings, where the facilities provided are confined to parking space and, possibly, the supply of petrol. In such instances, the risk varies with the size of the car park, and the precautions which are taken for the safety of cars, not only in relation to damage risks while they are being brought into or taken away from the premises, but also as regards their safety from theft. It is reasonable to expect receipts to be given for vehicles parked and for those receipts to be returned to the attendant in charge of the car park before the vehicles are allowed to leave the premises. The experience of the attendants and the precautions to be taken, as stipulated by the owners, are material in gauging the risk. Indemnities given to car park proprietors do not normally include the risks of fire and explosion, which, except for open car parks, would be the subject of a separate fire policy. Premiums are usually charged upon the number of cars accommodated at any one time, the capacity of the premises expressed in car values, or upon the takings and/or wages paid.

GAS CYLINDER MANUFACTURERS AND SUPPLIERS

Many gases such as butane, carbon dioxide, oxygen, propane, and nitrous oxide ("laughing" gas) are sold to the public in cylinders under pressure. Any commodity sold in this form must involve a risk of accident through some defect in the container which may be inherent in its construction, or which may result from ill-treatment, or even from wear and tear. Claims as the result of such occurrences would in the first instance generally be against the supplier from whom the cylinder containing the gas was purchased and it is usual for such suppliers to require insurance in respect of their liabilities for injury or damage. Frequently, the retailer will seek an indemnity from the manufacturers of the gas from whom he obtained the cylinders and sometimes both the gas manufacturers and the makers of the cylinders will seek insurance. Much depends upon the gases concerned, but in the light of the proposer's past claims experience a rate is generally fixed on the basis of an estimate of the number of cylinders to be handled in the year, subject to subsequent adjustment.

HAIRDRESSERS

Policies issued in respect of hairdressers' shops require treatment similar to that for shop risks in general. The major risks of treatment, such as hair dyeing, foul shaves and the like, are outside the scope of the ordinary policy, and few insurers are willing to accept such risks.

HALLS

Halls used for various purposes by clubs and other bodies are frequently proposed for insurance. A survey is usually needed in order to ascertain the extent to which the general public (including club members) has occasion to visit the premises, and in order to discover precisely to what use the hall will be put. The number of seats, lettings, dances, lectures, political meetings and the like, will indicate the risk to be undertaken, while the adequacy or otherwise of exits must affect the premium charged.

Food and drink risks may be included, particularly if catering arrangements are in the hands of the owners. If cinematograph performances are given, a cinema policy may be more appropriate than an ordinary general third party policy.

HOSPITALS AND NURSING HOMES

Hospitals within the National Health Service in this country do not insure against third party risks, but in other instances where insurance is required the principal risk usually required to be insured is that of treatment, whether arising out of the negligence of nurses in the application of hot water bottles and similar apparatus, or out of operative, X-ray, sun-ray, electrical and radioactive treatment. In their desire to assist, many insurers are willing to waive their general disinclination to cover treatment risks and policies are commonly drafted to include a comprehensive indemnity in respect of the liabilities towards third parties. Premiums are calculated either upon the number of beds, the wages paid to employees, and/or the number of out-patients passing through the out-patient departments in the course of a year. The premium under each, or all, of these headings, is subject to adjustment annually. An indemnity against food poisoning claims is generally included, but the underwriter recognises that patients may be expected to take longer to recover from the results of accidents or food poisoning than would persons with health previously unimpaired. Claims from patients may therefore well prove expensive to settle.

While few insurers are willing to furnish an indemnity to the

individual doctors engaged at a hospital or nursing home (for the reason that the facilities of the Medical Defence Union are available to them) many insurers are willing to extend policies to indemnify nurses in respect of their personal liabilities, provided that no such indemnity is available to them from any other source.

LIFT ENGINEERS

Apart from the risks incidental to any engineering or other work undertaken away from the insured's own premises, lift engineers, by reason of the type of machine with which they are concerned, may be involved in claims arising out of an allegation that the absence or failure of safety devices was due to their negligence. Accidents of this kind as a rule happen after the work of installation or maintenance has been completed and such accidents would not always be covered by the form of policy in use by some insurers. A premium based solely on wages expended would not of necessity fairly reflect the extent of the risk and if this type of cover is given, some reference to turnover is usual.

In this trade, too, the risks of fire and explosion should not be overlooked. Serious accidents have occurred through the use of a blow lamp for freeing a frozen pipe comprising a part of an hydraulic lift, whereby a dust explosion was caused followed by a serious fire.

MINIATURE RAILWAYS

There are a number of such railways of varying dimensions in different parts of the country operated sometimes by amateur clubs and sometimes commercially. The principal hazard arises out of their use for the conveyance of passengers, often for reward, but sometimes the apparatus is too small to permit of such use. When passengers are carried, even if they be confined to small children, care is needed to ensure that reasonable steps are taken to avoid accidents. When the railway reproduces a full-size system in miniature complete with carriages, signals and similar equipment, it should be ascertained that a safe method of working exists. Regard should be paid to the number of passengers conveyed at any one time and the risk of a catastrophe should not be overlooked, especially where there are gradients and curves.

MOUNTAIN RAILWAYS

There are few such risks in this country, but as with all other passenger carrying undertakings, they involve a special cata-

strophe hazard. Any such risk would need a detailed survey by a qualified engineer with special knowledge of the legislation under which such undertakings are permitted to operate. The method of working, usually the rack and pinion system, should be ascertained and particular enquiry made as to the observance of regulations regarding upkeep of the track and rolling-stock with particular reference to the compliance with those dealing with brakes.

Premiums may be calculated on the basis of either the number of passengers carried or the passenger receipts during the year.

PHOTOGRAPHERS

There is little to distinguish a photographer's retail premises from those of other shops, from the third party point of view, except that carelessness in the use of arc lamps may result in claims. Often, however, work is undertaken away from the insured's own premises, and this is particularly so with commercial photographers. It follows, therefore, that rates must be determined by the classes of premises likely to be visited.

PLASTERERS

Plastering work is in many instances undertaken by builders, but plastering is often a separate trade. The work undertaken by a plastering firm frequently includes the plastering of private houses, as with the builder, but more often extends to larger contracts, such as those concerned with the interiors of theatres, cinemas, and halls.

The plasterer's employees always work on contract alongside the employees of other contractors, all of whom are in the position of third parties so far as the plastering firm is concerned. Moreover, much of this work necessitates the use of scaffolding and involves the hazard of dropping materials from heights on to those working below. Higher rates than normal are charged for plasterers who undertake contracts of this kind.

PLASTICS

This is a comparatively new type of risk and while the goods manufactured vary within wide limits there is always a fire and explosion hazard to be considered. The size of the articles and the number of power presses are a guide to the extent of the factory, but not necessarily to the public liability risk since the public do not normally have access to those parts of the premises where the moulding is done, except in conducted parties.

The packing risk has to be taken into account and the disposal of waste with possible effluents.

The wages disbursed are the usual basis of rating.

PRESERVE AND SWEET MANUFACTURERS

The factory risk does not call for special comment, but care is needed in dealing with the risk of claims arising out of manufactured preserves. Much depends upon the reputation of the proposers, as shown by their past claims experience, which may generally be the best guide to the care taken in the process of manufacture. It may be that a series of claims can be traced to a common cause, such as the presence of small pieces of glass in the firm's products. It may be practicable to locate the reason of this trouble, possibly because of the practice of standing filled glass containers one on top of the other, with the result that fragments of glass are chipped from the top of the jar beneath into the product. The use of rubber or other mats to separate the layers may remedy this and the risk may then become normal.

Premiums are usually based on the turnover.

PUBLIC AUTHORITIES

Public authorities' risks vary considerably, and depend essentially upon the nature of the undertakings managed by each authority. It will almost always be found that a certain mileage of roads is the responsibility of the authority, and the work undertaken in connection therewith calls for consideration with particular regard to the risk of injury to persons or damage to their property. Tar spraying may give rise to a large number of small claims, and it may be necessary to provide an indemnity in respect of accidents occasioned by fire arising out of the use of tar boilers incidental thereto.

Other work commonly undertaken by public authorities includes drainage, the disposal of sewage, the removal and destruction of refuse, public baths and libraries, and many minor activities, too numerous to mention. So far as sewage, drainage and water supply are concerned, there may be risks of flooding which normally would be the subject of a special indemnity and the presence of reservoirs or streams calls for attention. The collapse of the banks of a reservoir may give rise to claims for substantial sums, and in this respect an indemnity unlimited in amount would rarely be given. The use of motor vehicles, as part of the authority's work, necessitates the effecting of motor policies, since such risks are excluded from the ordinary third party indemnity, as are also such risks as those connected with

tramways or omnibus undertakings. A third party policy issued to a public authority, however, may include an indemnity in respect of accidental bodily injury or accidental damage to the property of others, caused by the fire brigade, although frequently a separate policy is issued.

Public baths need attention, particularly as regards supervision and especially when children use the premises. It frequently happens that a baths hall, or other halls owned by the authority, may be used for entertainments during the winter months, when it may be that a separate policy for any such halls, on the lines of those for cinemas and theatres, should in theory be issued.

Country towns frequently have their publicly-owned markets, where congestion is usual. The supervision of the markets and the care which is exercised in the maintenance of the stalls and the premises generally must be considered.

Public authorities' risks are generally rated at a charge per cent. upon the wages paid to employees. The rates depend partly upon the past experience, the work undertaken, and the limits of indemnity required. The continued extension of the activities of public authorities, and consequently the changing third party risk, deserves attention.

PUBLIC HOUSES

The physical features connected with such risks necessitate higher premiums than those for ordinary retail shops. Frequently, cellar flaps and the like are to be found outside such premises, with their attendant risks, while wet and slippery floors and the bursting of bottles may give rise to claims.

Policies are extended in respect of food and drink risks. It is often possible to obtain indemnity from the brewery which supplies the retailer, and thus the amount which the insurers ultimately have to pay may be reduced. Fixed premiums are generally charged for public houses, with a loading for food and drink risks, when these are to be insured. Joint policies, in the names of the brewery and the tenants, are not uncommon, and a slightly higher rate is warranted for the joint indemnity.

QUARRIES

The risk with quarries lies mainly in their situation, particularly as regards public highways and footpaths. When quarries are situated well away from important roads and are adequately fenced, there is frequently little risk of accidents, provided that explosives are used with the utmost care and that precautions are taken to ensure that damage is not caused to

surrounding property or injury to persons who may be wandering over adjoining land. Much depends on the materials quarried, and the exclusion of the general public from all such premises is important. The main risk concerns cartage contractors' employees and others who have occasion to visit the premises on business, and the method of loading vehicles, whether by chutes or otherwise, should be investigated.

Premiums are generally calculated upon the wages paid to employees, subject to adjustment. The policy requires amendment when explosion risks arising out of blasting are to be included.

RECREATION GROUNDS AND PUBLIC PARKS

Open spaces are frequently owned by public authorities, and third party insurances are needed. Where the paths are adequately maintained, there is usually little risk of accidents, and claims on account of injuries to children are probably the most common. It has been held that the presence of shrubs bearing poisonous berries may constitute negligence. In *Glasgow Corporation v. Taylor* (1922), 1 A.C. 44, it was held that the defendants were responsible for injuries sustained by a child who consumed poisonous berries growing in public gardens near a playground. Within recent years, apparatus for the amusement of children has been installed in many public recreation grounds, and some of the devices supplied are likely to give rise to claims when used by children of tender years, or when there is inadequate supervision. There is always the possibility that youths may meddle with the apparatus, whereby injuries to young children may result. Children's playgrounds, surfaced with concrete, involve greater risks of accident than do grass-covered grounds, and should be rated accordingly. A fixed premium per ground is usually charged, on the basis of its area and the kind of apparatus installed.

RESTAURANTS AND CAFÉS

The method of lay-out of the restaurant or café is important. Crowded tables may give rise to frequent claims for damage to customers' clothes, owing to the spilling of food or drink supplied. Premiums are normally based on the wages paid to employees, plus a loading if the food risk is to be included.

ROAD CONTRACTORS

Road contractors' risks may involve serious claims, in view of the heavy work done. Excavations and heaps of material may

be left insecurely protected or unlighted at night, while the use of picks, mechanical or otherwise, may lead to injuries caused by splinters of stone. Many underground cables and pipes are not charted, even by the authorities to whom they belong, and there is therefore considerable risk in crowded areas of damage to water, gas and electricity mains. Such risks may be heavier by the type of labour engaged, for if regular and competent workmen are employed, the risk of accidents is considerably less than when unskilled labour is engaged. Tar spraying risks call for considerations similar to those mentioned under Public Authorities.

Premiums are as a rule based on the wages paid to all employees engaged on the work, and it is usual for separate policies to be issued for individual contracts.

SCHOOLS

Indemnities are required by public authorities, school managers and trustees, in respect of liability for accidents to the public, including scholars. Parents and others may visit the school premises and meet with accidents while thereon, while persons may have occasion to use the highways or paths which surround or traverse the premises. There are but seldom any unusual features, provided that the insurers are satisfied that there is no undue hazard as the result of falling trees and branches or on account of the proximity of cricket or football pitches to roads or paths. In the ordinary way, a fixed premium is applied, plus a charge per hundred scholars (if the scholars risk is to be included), depending upon the limit of indemnity selected.

Reformatory Schools. The type of child to be found in such schools increases the third party risk although discipline may be expected to be more rigidly enforced. In many respects, reformatory schools are not unlike technical schools, because trades are usually taught. Most schools of this kind are owned by public authorities and they are responsible for damage or injury caused by the children.

Schools for the Mentally Deficient and Cripples. The disabilities under which the scholars at such schools labour, tend towards an increased accident risk, and many insurers are loth even to submit quotations. Much depends upon the extent of the disabilities of the children and the subjects taught. There is responsibility for damage or injury caused by the children, as under the last heading.

SHOPS

Small retail shops are divisible into three classes, varying with the degree of risk involved. In the first class come such risks as chemists' shops (excluding the dispensing risk), booksellers, and the like. In the second class, somewhat heavier risks, such as fruiterers, grocers and drapers, are included, while the third covers risks associated with butchers, fishmongers, ironmongers and others, where there is considerable risk of bodily injury or damage to property, on account of heavy articles suspended from the ceiling or walls, and the slippery floors, because pieces of meat and fat fall thereon.

Cellar flaps and hoists should be adequately guarded in order to prevent accidents. The display of articles for sale on the forecourts of premises calls for attention, especially when the articles are heavy, while defects in the forecourts themselves may cause claims.

Premiums are charged per shop or, if the number of assistants exceeds, say, three, then the premium may be partly based upon the number of assistants, and for larger risks on the wages disbursed.

When products risks are to be included, an additional premium may be charged, but for butchers and similar risks a premium more nearly commensurate with the risk is obtained if the calculation is based upon turnover. Most proposals are rated with special reference to past accident claims experience.

SKATING RINKS

Within recent years, roller and ice skating have again become popular. Serious claims are possible mainly on account of defects in skates, which are frequently supplied by the management, or because of the negligent fixing of such articles. Another feature to be considered is the suitability of the premises for a skating rink, and if it is found that the premises were not originally constructed for the purpose but have been adapted, investigation is necessary. The safety of onlookers and the erection of a barrier to protect such persons may be regarded as essential. Premiums are conveniently calculated on the receipts from the undertaking, rather than on wages, which are small because they are frequently supplemented by tips. A percentage rate is charged on the estimated takings, subject to adjustment at the end of the period of insurance.

SPORTS GROUNDS

The main risk of injury to persons who frequent the grounds is associated with the stands provided for such visitors. The age

of each stand, the methods of construction, and the speed with which it can be emptied in the event of panic, are material. Whether the stand has a roof and, in addition to its general upkeep, the presence or otherwise of storm windows should be noted. Large trees in the grounds may give rise to accidents on account of falling branches, and the methods of railing the ground are important. Where sports grounds are used for popular football or cricket matches, the adequacy of the exits and the possibility of the gates or other means of access being rushed by supporters who cannot enter legitimately because the premises are full should be considered. There may be a risk of injury to passers-by through cricket balls, for example, passing over the boundary walls on to the highway, where injury may be caused to pedestrians and to persons driving or riding in vehicles.

Car parks are frequently attached to sports grounds, and an indemnity may be required on account of damage or theft risks, in relation to cars temporarily left there. This is dealt with under the heading of Garages, page 116. Premiums for the main risk may be assessed on gate receipts, or on attendance, while, in some instances, a flat premium is charged for the whole risk.

SUNDAY SCHOOLS

Sunday school risks generally differ but little from those of ordinary schools, except that the time spent by the scholars on the premises is far less than at ordinary day schools, and to this extent the risk is lessened. The suitability of the furnishings, according to the ages of the scholars who attend the school, is material, and premium is usually calculated on the maximum number of scholars in attendance at any one time during the year of insurance.

There has always been considerable doubt as to the extent to which the promoters of Sunday schools are liable for accidents to scholars attending them. It is clear, however, that as an invitation is held out to scholars to attend—although attendance is voluntary—the authorities must take reasonable precautions for their safety. Discipline is not always so strictly enforced as at day schools and this may lead to accidents.

Annual Sunday school outings are frequently the subject of separate indemnities. Premiums depend upon the number of persons taking part, children and adults, the length of the journey, the venue of the outing, and the degree of supervision to be exercised.

THEATRES

Theatres are in a similar category to cinemas (see page 110), and the principal special feature is the possibility of accidents by reason of the type of performance given on the stage. When acrobatic performances are given the performers may pass over the heads of the audience. There is considerable risk of panic, and the precautions taken to render the scenery fire-resisting call for attention as also the adequacy or otherwise of exits and their lighting.

Premiums are usually based on the seating capacity, plus an extra charge for refreshment undertakings which may be conducted in connection with a theatre.

TRAMWAYS

The insurance of third party risks arising out of the use of mechanically-propelled vehicles is strictly outside the scope of this book. For tramways it is sufficient to indicate that third party policies are issued to public authorities and others who manage tramway undertakings, but the risks are heavy, especially in those parts of the country where there are gradients. The facilities for the inspection and maintenance of the tram-cars are important, and the experience of the drivers must be satisfactory as well as the degree of observance of statutory requirements for the safety of passengers.

Premiums are calculated either on the receipts from the undertaking, or on the number of car miles run in the course of the year. Substantial indemnities are required for such insurances, and in view of the unfortunate experience in the earlier days of the business, rates are substantial.

UNIVERSITY COLLEGES

In view of the age of students who attend universities, the third party risk is undoubtedly lighter than that associated with schools for young children. At the same time, it must be borne in mind that many guests are entertained during the year, and the "food and drink" risk must likewise not be overlooked.

WAREHOUSES

It is impossible to lay down hard and fast rules for dealing with third party insurances in connection with warehouses. The external risk, depending upon the upkeep of the premises, does not differ substantially from that connected with other blocks of buildings. Frequently, there are relatively few visitors to the premises, and they are confined, almost exclusively, to per-

sons delivering or taking delivery of goods. The presence of hoists is to be expected, and the usual arrangements as to their periodical inspection by competent persons is essential, except in those rare instances where third parties never have occasion to approach them. The lighting of stairways and passageways calls for attention, while the position of the offices and showrooms in the block will give some indication of the extent to which third parties are likely to pass through the premises.

Premiums may be calculated upon the wages paid to employees, or, alternatively, a fixed annual premium may be charged according to the limit of indemnity required.

WATER HEATING ENGINEERS

The work of water heating engineers is mainly conducted away from their own address, and concerns the installation of high or low pressure hot water systems in the premises of others. Apart from the risk of accidents inseparable from any engineering work on the premises of others, whether in course of erection or while occupied, there is the added risk of flooding when the apparatus installed is such that water is confined. It is clear from the ordinary terms of the third party policy that damage to the apparatus installed would not be covered, but the water heating engineer will expect his policy to provide an indemnity in respect of damage caused by water which may escape through breakdown in the apparatus while it is being erected or tested. Not infrequently, substantial limits of indemnity are required, and experience has shown that water damage claims may be costly, particularly when the buildings are occupied and water which escapes causes damage to valuable stocks on lower floors. Buildings in course of erection, although not usually containing stock, may contain expensive machinery, such as electric motors and other electrical apparatus, possibly forming part of lifts or other machinery, which may sustain damage through the overflowing of water pipes, tanks, or other water apparatus.

Premiums are assessed on the wages expended on work away from the insured's own premises, and fire and explosion risks (other than the explosion of steam boilers) are commonly included at an extra rate per cent. charged upon such wages.

WHARVES

Wharf risks vary according to their situation and the goods dealt with at each wharf. Frequently, members of the public are excluded from the premises, but there is the risk of injury

to the employees of cartage contractors and others who have occasion to visit the premises to supervise the removal of goods. A heavy risk arises out of the use of cranes, but most of these must be periodically inspected by skilled engineers in order to satisfy statutory requirements and cover it dealt with in the engineering department.

Almost invariably, risks connected with foul berthing of vessels are excluded, since experience has shown that heavy claims may be made on account of damage to ships' bottoms if the river upon which the wharf is situated is tidal, for ships may settle upon an uneven keel when the tide goes down. Marine underwriters, on receipt of a claim for such damage to a vessel, almost invariably seek to pass the liability for repair to the owners of the wharf who may have been responsible for the damage to the vessel because of the provision of an uneven bed upon which the vessel has rested.

Premiums for wharves are usually charged at a fixed rate per wharf, since the wages basis is frequently impracticable because of the employment of stevedores by persons not necessarily connected with the direct management of the wharf.

CHAPTER IX

PRODUCTS LIABILITY

Products liability indemnities are in increasing demand because of the awareness of the public of their legal rights, and the varied circumstances in which liability may be incurred. Death, bodily injury or illness can be caused by a wide range of products and mere *contact* with some products can cause harm, e.g., dermatitis. Legal liability may vary with the status of the party, whether manufacturer, retailer or intermediary, and at times all of them may be involved, in these days when there is a tendency to join several parties as defendants to an action for damages. In *Willis v. Bentalls, Ltd.* (1933), *The Times*, 22 November, which is considered subsequently, there were five parties involved on the defendants' side. The goods may be manufactured, processed, stored or handled, or sold and supplied in the usual way.

LIABILITY AT LAW

Liability may arise at common law or by reason of statute, and the following are the main heads of liability.

BREACH OF CONTRACT

A breach of duty by virtue of contractual relations affects only the parties who have entered into the contract.

Guarantees

When some goods are sold or supplied, there is a specific guarantee given, and this may involve a very onerous contractual obligation. The guarantee may amount to an express warranty that the goods are safe or fit for some particular purpose, and a breach of warranty as a rule gives a legal right to damages (see p. 137).

It follows that the terms of the guarantee must be known before it is possible to decide the extent of the liability. The guarantee may not go beyond an undertaking to replace defective goods or any defective part of an article that may have been sold or supplied.

Sale of Goods Act, 1893

There is also what is sometimes termed a quasi-contractual obligation, which is imposed by the Sale of Goods Act, 1893, Sections 13-15.

Section 13 (Sale by description.) Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

In *Grenfell v. E. B. Meyrowitz, Ltd.* (1936), 2 All E.R. 1313, the claim was based *inter alia* on this Section. The plaintiff was an aviator who purchased from the defendant opticians a pair of flying goggles, described in a catalogue as fitted with "safety-glass lenses". When he was flying over the Solent he had to make a forced landing on to the water, and when the shock of the immersion was over he found himself still in the cockpit with his right eye profusely bleeding. A splinter of glass was embedded in the lower eyelid, and it was admitted by the defendants that this splinter came from the goggles. They were made of laminated glass, consisting of two sheets of glass with an interposed sheet of plastic. The term "safety-glass" in 1932 referred only to such laminated glass. It was held that there was no warranty of absolute safety in the word "safety-glass", that the plaintiff did obtain what he purported to buy, namely, "safety-glass goggles" as generally understood by persons making use of them, i.e., goggles made from laminated glass, and that there was no evidence that the goggles were not of merchantable quality.

In *Bostock & Co. Ltd., v. Nicholson & Sons, Ltd.* (1904), 1 K.B. 725; 20 T.L.R. 343, there was a sale of goods by description within the meaning of Section 13, and the defendants were held liable for breach of warranty in not supplying sulphuric acid commercially free from arsenic. The acid contained arsenic in large quantities and was used by the plaintiffs in the manufacture of brewing sugar, which they sold to brewers. The plaintiffs recovered the whole cost of the impure acid and of the value of the goods rendered useless by being mixed with the poisonous acid.

Section 14 (Implied conditions as to quality or fitness). Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:

- (1) Where a buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that in the case of a contract for the sale of a specified article under its patent or other trade name,

there is no implied condition as to its fitness for any particular purpose.

- (2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.
- (3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
- (4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

In *Grant v. Australian Knitting Mills, Ltd. & Ors.* (1935), 52 T.L.R. 38, which came before the Judicial Committee of the Privy Council, the appellant contracted dermatitis as the result of wearing woollen underwear in which free sulphite had been negligently allowed to remain. The retailers were held liable in breach of an implied warranty or condition under the South Australia Sale of Goods Act, 1895, which was in similar terms to Section 14 of the Sale of Goods Act, 1893; and the manufacturers were found liable in tort.

Foreign bodies in goods sold may give rise to claims. In *Wilson and Another v. Rickett, Cockerell & Co., Ltd.* (1954), 1 All E.R. 868, "a ton of coalite" was sold to the plaintiff. When part of the consignment was put on a fire in an open grate a violent explosion occurred which caused damage to property. The explosion was due not to a piece of coalite but to something sent with it, such as a piece of coal in which an explosive was imbedded. It was held that Section 14 applied to all goods delivered in purported performance of a contract for sale and as the consignment was not of merchantable quality, being unfit for burning, the defendants were liable.

Priest v. Last (1903), 2 K.B. 148 C.A., illustrates the claims that can arise from defective articles. A shopkeeper sold a rubber hot water bottle, and he said it would stand hot water but not boiling water. The bottle burst and injured the customer's wife, and it was held that the bottle was not fit for holding water, so that the shopkeeper was liable for breach of an implied condition.

Section 15 (Sale by sample). (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

- (2) In the case of a contract for sale by sample—
 - (a) There is an implied condition that the bulk shall correspond with the sample in quality;
 - (b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
 - (c) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

In *Parkinson v. Lee* (1802), 2 East 314, it was held that a merchant was not responsible for a latent defect which examination of the sample failed to disclose.

LIABILITY IN TORT

Liability in tort depends on the ordinary principles of the law of negligence, and this was described in *Hay (or Bourhill) v. Young* (1942), 2 All E.R. 396 as -

"a fluid principle, which has to be applied to the most diverse conditions and problems of human life. It is a concrete, not an abstract idea. It has to be fitted to the facts of the particular case."

Under breach of contract, it is possible to raise the defence of inevitable accident or absence of negligence; if the goods do not comply with the terms of the contract, express or implied, then there is liability. The direct purchaser only, however, normally relies on breach of contract while members of the public rely on tort. It follows that in any one case different parties may have different rights; one party may have to prove breach of contract to succeed and another may find it necessary to prove negligence, while actions by one person can be founded on both breach of contract and negligence.

A purchaser of goods or any other person may have a direct right of recovery in damages against the manufacturer, as was shown in *M'Alister (or Donoghue) v. Stevenson* (1932), A.C. 562. In this case a bottle of ginger beer had been purchased by a friend of the plaintiff, and later she drank some of the ginger beer before she became aware of the presence of a snail in the bottle. As a result, the plaintiff was seriously ill. Lord Atkin said:

"A manufacturer of products, which he sells in such form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care."

Where the article of consumption is so prepared as to be intended to reach the consumer in the condition in which it leaves the manufacturer, and the manufacturer takes steps to ensure this by sealing or otherwise so that the contents cannot be tampered with, I regard his control as re-

maining effective until the article reaches the consumer and the container is opened by him."

As noted already, the plaintiff who consumed the ginger beer was not the purchaser, and thus there was a claim in tort alone.

Even in these days of the litigation complex, damages cannot always be recovered. In *Weekes v. Joseph Terry & Sons, Ltd.* (1941), *Glasgow Herald*, 27 March, 1941, Miss M. L. P. Weekes, a Glasgow dressmaker, claimed £2,500 as damages in respect of injuries sustained by her in swallowing a piece of a safety razor blade which, she averred, was contained in a chocolate made by the defenders. She was awarded £800 but the decision was reversed on appeal to the Court of Session. The question for decision was whether the metal became associated with the chocolate in the defenders' factory or in the pursuer's house after the box was first opened. The pursuer's expert witness had stated that a foreign element could only have been introduced when packing in the crimped cup, but at that stage the chocolate coating was hard and glazed, so that a clean piece of metal could not readily adhere. The box had been left open at the week-end and whereas five chocolates only were accounted for, some other eleven or twelve were missing and no explanation was given of the discrepancy. There was no evidence to show that the pursuer's shop and other rooms were kept clean and tidy, and previous occupiers may have used old razor blades in their trade; it was proved that no razor blade or anything resembling it was used at the defenders' factory, and no such thing had ever been seen in the packing room according to the evidence of the foreman who had been with the defenders for thirty-one years. The Learned Judge held that it was impossible to say that the pursuer had proved that the metal and the chocolate were brought together in the factory rather than in her own house or shop. The balance of probability inclined the other way because in the factory special care against such accidents was part of the routine*, whereas in the pursuer's premises no special precautions were taken.

The manufacturers were therefore vindicated, and the case emphasised the extreme care taken at every stage in the manufacture and packing of chocolate confectionery.

In *Daniels and Wife v. R. White & Sons, Ltd., and Another* (1938), 4 All E.R. 258, the male plaintiff bought a bottle of

* X-ray machines are at times used to detect foreign bodies in chocolate and confectionery but these have been superseded in recent years by metallic detectors; they are electronic devices which mechanically and audibly give warning of the presence of metal in goods passed through the device.

lemonade from Mrs. Tarbard, the second defendant, who was a licensee. Husband and wife had a drink and felt a burning sensation because the bottle contained carbolic acid instead of mineral water. Both claimed against the first defendants for negligence and the husband claimed against the second defendant for breach of implied conditions under the Sale of Goods Act, 1893. It was held that the duty owed by the manufacturers to the consumer was not to ensure that their goods were perfect, but merely to take reasonable care to see that no injury was done to the consumer or the ultimate purchaser and this duty had been completely fulfilled. So far as the husband was concerned, however, there was a sale by description and therefore a breach of the implied condition that the goods should be of merchantable quality and he could recover under Section 14(2).

DANGEROUS GOODS

Where a manufacturer puts dangerous goods on the market, he must take reasonable steps to prevent any person coming into contact with them from being injured. In *Holmes v. Ashford & Others* (1950), 2 All E.R. 76, Tucker, L.J., said, "I think that it is a question of degree and a question of fact in every case whether sufficient warning has been given."

In *Wilson v. Buckley, Osborne, Garrett & Co., Ltd., and Wyrovoys Products, Ltd.* (1940), 1 All E.R. 174, the plaintiff's hair had been dyed by the first defendant and the dye had been distributed by the second defendants, while the claim was not prosecuted against the third defendants (the manufacturers) because they were in liquidation. The distributors advertised the product as absolutely safe and harmless and as positively needing no test before use. The hairdresser without negligence applied the lotion but it was a 10 per cent. solution and not 4 per cent. as intended; hence, dermatitis was caused. The distributors in the course of their negotiations with the manufacturers had been informed that the solution should not be more than a 4 per cent. solution but they took no precautions to make strict conformity with this requirement a term of their contract with the manufacturers. The contract was partly sale of goods and partly the rendering of services. It was held that the hairdresser was liable in contract because by using the product she had given an implied warranty that it was a merchantable hair dye. The second defendants were liable because, on the facts, they were negligent, and by their advertisement they had intentionally excluded interference with, or examination of, the article by the consumer, and thus had brought themselves into

direct relationship with him. The product was a dangerous one even if only the proper percentage (4 per cent.) of acid had been present, so that an unusual standard of care was required and the distributors on this further ground owed a duty to take care towards the plaintiff, and were in breach of that duty.

Manufacturers' Duty to Warn

The facts were different in another hair-dye case—*Holmes v. Ashford & Others (supra)*, for the hair dye was delivered to the hairdresser in labelled bottles together with a brochure of instructions and both the labels and the brochure contained a warning that the dye might be dangerous to certain skins; hence, a test before use was recommended. The hairdresser had read the labels and the brochure and was aware of the danger, but he had made no test and did not warn the plaintiff. The plaintiff claimed damages against the hairdresser and the manufacturers, and was awarded judgment against both. On appeal by the manufacturers, it was held that a manufacturer who puts a dangerous article on the market must take reasonable steps to prevent any person coming into contact with it from being injured, as noted above, but it is not necessary in every case that precautions should be taken to ensure that the ultimate recipient of the article is warned of the danger. The manufacturers had given the hairdresser a warning which was sufficient to intimate to him the potential danger of the dye and it was not necessary that they should have warned the plaintiff.

In *Farr v. Butters Bros. & Co.* (1932), 2 K.B. 606, the defendants were crane manufacturers, and they sold a crane in parts to X & Co., a firm of builders; the parts were to be assembled by X & Co.'s men. The plaintiff, one of their employees, was an experienced crane erector, and he discovered defects which he marked with chalk. He said that he would report this to X & Co., but he nevertheless worked the crane before the defects had been remedied. Part of the crane fell and killed the man concerned. It was held that the defendants were not liable because there had been an opportunity of reasonable inspection; hence, the defendants owed no duty to the deceased. It was therefore useless to consider contributory negligence on the part of the deceased.

Dangerous Articles Sold to Children

There have been cases where dangerous articles have been sold to children. In *Burfitt v. A. & E. Kille* (1939), 2 All E.R. 372, a boy aged 12 bought a pistol for firing blank cartridges.

A piece of copper from a cartridge case was blown into the eye of a boy who was standing nearby, and it was held (1) the pistol was a thing dangerous in itself, and (2) if a seller sells a thing dangerous in itself to such a person as the buyer, the seller owes a duty not only to the buyer but to all persons who may reasonably be contemplated as likely to be placed in danger.

A somewhat similar case was that of *Yakchuk and Another v. Oliver Blais & Co., Ltd.* (1949), 2 All E.R. 150, in which two small boys had seen a Red Indian scene at a cinema and one of the boys by an untrue statement prevailed on an employee of the defendants to sell them some petrol. The boy said that his mother's car was "stuck down the street" but his story was such as to arouse rather than to allay suspicion and the fact that he had told a lie could not avail the defendants. In fact, the petrol was required to enable the boys to re-enact what they had seen. One of the boys was seriously burned. It was held that the defendants' employee having given an explosive substance to a boy who had limited knowledge of what might happen and the boy having done what a child of his age might be expected to do, the defendants could not plead contributory negligence. Moreover, in the light of the findings of fact of the Canadian courts it was impossible to say that a new cause had intervened. The defendants were therefore held liable for the negligence of their employee. A warning would have been useless and the sale should not have been effected.

OTHER STATUTORY LIABILITIES

Sometimes insurers find that there has been a prosecution under the Food and Drugs (Adulteration) Act, 1928, or under the Public Health Acts because food has been found to be below standard or unfit for human consumption. In such circumstances, although insurers are not concerned with the prosecution, there can then be little, if any, defence to a products liability claim, which has to be settled on the best terms.

In *Square v. Model Farm Dairies (Bournemouth), Ltd.* (1939), 1 All E.R. 259, the illness arose out of typhoid fever contracted from milk. The plaintiffs founded their claims *inter alia* on breach of the statutory duty imposed by the Food and Drugs (Adulteration) Act, 1928, which requires sellers of food to supply food of the nature, substance and quality demanded. In this respect it was held that the Act imposed a penalty for what would in any event give rise to a right of action at common law. The Act did not, of itself, give any right of action for a breach of the duty imposed by it. In the course of the judgment, it

was said, ". . . the Act of 1928 is dealing with the same subject matter as that which would arise in most cases of the sale of goods where a civil action would lie".

GUARANTEES AND DISCLAIMERS

Goods are sometimes sold subject to a guarantee, and naturally the terms of the guarantee must be known since they have an effect on the extent of the liability. Often the guarantee, as noted on p. 129, does not go beyond an undertaking to replace defective goods or any defective part of an article that may have been supplied, but the terms of the guarantee may be much more onerous.

The opposite of a guarantee is a disclaimer. If a disclaimer is to be effective it must be incorporated into the contract. A disclaimer on notepaper or even on an invoice may not be sufficient protection for the vendor. Preferably, the disclaimer should be indicated in clear terms on the article itself if, for instance, sold in a bottle, and also on the container, if any. The Courts will decide in favour of a plaintiff if it can be proved that the disclaimer was not effectively drawn to the plaintiff's attention and made part of the contract.

In *Clarke and Wife v. The Army and Navy Co-operative Society, Ltd.* (1903), 19 T.L.R. 80, Mrs. Clarke bought a tin of chlorinated lime for disinfecting purposes, and when she was opening the tin what she described as an explosion took place and injured her eyes. There had been a previous accident, and the employee who sold the tins (a qualified chemist) was told to warn customers, but he did not warn Mrs. Clarke. In the defendants' price list there was the following passage:

No warranties are given with the goods sold by the Society except on the written authority of one of the managing directors or the assistant manager.

It was held that the implied warranty was not "given with the goods sold" but had an independent existence in law, and was by the operation of law introduced into the contract.

NOT THE MANUFACTURER ONLY

The Sale of Goods Act, 1893, uses the term "seller" in a wide sense, and the words "whether he be the manufacturer or not" are to be found in Section 14. Liability under contract, quasi-contract or in tort can affect persons in almost any category, e.g., retailers, wholesalers, manufacturers, processors, repairers, growers of primary produce, hirers, engineers, builders and contractors.

Moreover, there is often a chain of causation, so that a claim made against a retailer is passed on to the distributor, to the wholesaler and eventually to the manufacturer. This means increased legal costs. One of the most striking illustrations is the case of *Willis v. Bentalls, Ltd.* (1933) (*supra*), which concerned the sale of fur trimming and caused dermatitis. The third parties were Debenhams, Ltd., the wholesalers from whom the retailers purchased the trimming in bulk; the fourth parties were Astrachans, Ltd., the manufacturers of the trimming; the fifth parties were Smithson-Gledhill, Ltd., the dyers; and the sixth parties were Imperial Chemical Industries, Ltd., the manufacturers of the dye. The amount of the damages was only £172 11s. and the costs were out of all proportion thereto. Judgment was given for the plaintiff against Bentalls, Ltd., for the sum named, for the defendants against the third party, for the third party against the fourth party, and for the fourth party against the fifth party, in each instance with certain costs, and the issue between the fifth and sixth parties was determined separately.

THE GOODS CONCERNED

Products liabilities concern goods of all kinds in the widest sense, and whether the goods are sold, supplied, manufactured, processed, stored or handled. There are no limitations as regards classes of goods within the provisions of the Sale of Goods Act, 1893, and the same applies to contract and tort generally.

At the same time, the type of goods determines the degree of care required and may affect the extent of the liability. This has been illustrated by reference to goods which are inherently dangerous, and the extent of the warning given may need to be varied according to the kind of goods.

The containers, too, in which the goods are packed or distributed may give rise to liability; for instance, defective bottles which break on opening or even explode and cause serious hand injuries. Sale of Goods Act liability extends to containers, such as bottles, although by the terms of the contract no property in the bottles, passes to the buyer. In *Gedding v. March* (1920), 36 T.L.R. 337, the plaintiff kept a small general shop and sold mineral waters obtained from the defendant. The defendant charged 3d. for the contents of each bottle and 1d. for the bottle, and the plaintiff got 1d. back if she returned the bottle. While she was serving a customer, the plaintiff placed in its case a bottle of lime juice and soda when the bottle exploded and seriously injured her. It was held that when under a contract of sale mineral waters are supplied in bottles not only the con-

tents but the bottles themselves, although the property in the bottles does not pass, are goods "supplied under a contract" within the meaning of Section 14(1), and there is an implied warranty that they are fit for the purpose for which they are required.

As another illustration of the wide meaning attached to "goods", consideration should be given to aircraft for which products liabilities arise. Heavy claims can be made if accidents occur by reason of a fault in either the design or the manufacture of an aircraft. There may be claims from passengers and other members of the public as well as heavy consequential loss claims.

OVERSEAS MARKETS

Goods manufactured and sold in the United Kingdom are sent to all parts of the world. Sometimes goods sold to an overseas customer are resold on their outward journey. Goods on their way to South Africa may be sold en route for delivery in South America, and this may affect the products liability.

Raw materials may be sold to manufacturers overseas or goods may be made in the United Kingdom under licence according to agreed plans and specifications. Here again, difficult problems as to the extent of products liability may arise.

UNDERWRITING PRINCIPLES

One of the effects of the exceptions found in the normal third party (general) policy is to exclude all products liabilities. It is now customary, however, to enquire on proposal forms whether certain extensions are required, such as liability for accidents arising from goods sold (see p. 84).

Many insurers limit the indemnity provided to liability for accidents arising from *defects* in goods. If this is not made clear, then the insurers would be in danger of having to deal with claims arising, for example, from the effects of products supplied not being up to standard.

There is a great future for products liability indemnities in view of the increasing awareness on the part of the public of their legal rights. Death, bodily injury or illness can be caused by a wide range of products, for example, food, drink, dyes and chemicals generally, mechanical equipment, beauty preparations and clothing. Indeed, mere contact with some products can cause injury, so that arsenic in wallpaper can have unfortunate effects and irritants in clothing may result in dermatitis, while foreign bodies, such as broken glass in mincemeat, drawing pins

in pork pies and maggots in chocolate may involve those responsible in claims. Moreover, an indemnity may be required in respect of goods manufactured, processed, stored or handled, as well as for those sold or supplied in the usual way. It has been shown already that the extent of the liability varies according to the status of the party, while several parties may be joined as defendants, which means that the underwriter may be called upon to provide contingent liability indemnities.

Products liability can be provided for in two ways: (a) by an extension of a third party (general) indemnity, or (b) by means of a separate policy. The questions which are usually included on a separate proposal form, when this is used, provide a guide to the information which the underwriter must obtain to enable him to consider products liability risks.

The Proposal Form

Name and Address. This information must be obtained for all types of insurances, but when considering a products liability indemnity the standing of the proposer is particularly important. He must be a person or firm of good repute, for if second-grade goods are sold or supplied there is more likelihood of claims than where the proposer is jealous of his reputation. A products liability indemnity is not designed to be a safeguard against inefficient methods of manufacture.

Trade or business. The underwriter needs to know the trade or business that is carried on and he must have a full description of the work undertaken. He must ascertain whether the proposer is a retailer, wholesaler, manufacturer, importer or in some other category in relation to the goods concerned. The underwriter must consider whether the proposer is likely to be the party who will be saddled with the ultimate liability, if and when a claimant should join several parties as defendants to an action for damages. The underwriter also considers, if the proposer is somewhere in the middle of the chain of supply, what will be his chances of recovering from his own supplier.

How long established. The proposer must state how long he has been established in business, and this will be considered in the light of the later enquiry about previous claims. If a person or company has been in business for many years, a reputation will have been built up, and there will be long-established methods followed, whether in manufacture, processing or any other work. An undertaking which has recently been founded has to make its way, and this is sometimes done by trial and error, with expensive results by way of claims. Such

a firm may operate on a minimum of capital and cannot be compared with a firm whose name is a household word.

The products. A description of the products must be given, with their constituents or ingredients. Some constituents may be dangerous and the underwriter enquires as to the precautions taken. Products may vary within such wide limits that further enquiries have often to be made. The purpose for which a product is used is relevant, e.g., nylon used for shirts is a different proposition from nylon used for parachutes.

Turnover. The estimated gross annual turnover has to be stated, divided between home and overseas business. If it is thus revealed that business overseas is transacted, further particulars are required, as noted later.

Insurance history. Details of any previous or existing insurance, declinature, refusal to renew or imposition of special terms must be disclosed.

Claims. Naturally, the proposer must disclose any claims that have been made against him. The underwriter will want the fullest possible particulars, and he will satisfy himself, if the person or firm was held liable, that suitable steps have been taken to prevent any future claims in similar circumstances. Indeed, the underwriter may be able to suggest further precautions, in the light of his wide experience, in order to improve the risk. This is one of the advantages of insurance protection, for the proposer naturally desires to avoid claims, if only for the sake of his own reputation, and he may be relied upon readily to co-operate in any suggestions for improvement that the insurers may feel led to make.

The claims official, too, in the light of his wide experience is more likely still to have the technical appreciation of the underwriting risks in different branches of industry, and this emphasises that underwriter and claims official should work together.

Limit of indemnity. There is often a limit for any one accident and a limit in respect of any one year of insurance. This is dealt with later.

Surveyor's Inspections

As a rule, further information is required, and the office surveyor may make an inspection. He will deal at the same time with the third party (general) risk.

Every proposal is different and calls for individual investigation. The surveyor is guided to a material extent by his general impression of the management, the tidiness of the premises, and the precautions taken. A small undertaking is not

always alive to the need for scrupulous care and may not have the capital to install expensive plant for example, X-ray apparatus to detect foreign bodies in finished products—which a large undertaking will have as a matter of routine. A specimen of the goods is helpful and it may be necessary to consult an independent expert, such as a chemist or engineer, in order to assess the risk.

A retailer is in a different position from a manufacturer or an intermediary, and there may be special agreements in force, including disclaimers of liability, which must be investigated. Some of the main features are studied below.

The general conditions of sale or supply are relevant to the extent of the liability which the underwriter is asked to assume. It must be ascertained whether there is a guarantee given or, on the other hand, whether a disclaimer accompanies the goods. Some goods are sold with printed instructions as to their use or storage, and it is necessary to be satisfied that the instructions are drawn to the purchaser's attention in clear terms. With some goods the instructions should be on the outside container as well as on the bottle or other receptacle placed in the container. The size of the print may even be relevant, more particularly where a warning has to be given to the user. The suitability of the receptacle and the method of opening that is recommended must also be taken into account.

The class of person who will use the goods may need to be known, and if the goods are such that a person may be allergic thereto, a special test may have to be made. Reference has already been made to cases where tests were necessary before hair dyes were used because some people's skin is more sensitive than that of others.

It is unsatisfactory to provide an indemnity in respect of certain specified products only; all the goods with which the insured deals should be within the scope of the indemnity arranged. Indeed, in such circumstances the insured might find that he was not fully covered, where, for instance, a wrong product was supplied as distinct from a defective one.

Goods Marketed Overseas

If goods are marketed overseas and the indemnity is to be extended accordingly, the insurers wish to know the extent of this activity—the amount of the gross turnover helps to indicate this—and also in what countries trade is carried on. The underwriter is influenced in his decision according to the type of goods

and the countries concerned, while it may be found that there are local laws which have to be considered as well as the propriety of the proposer seeking the requisite indemnity within the overseas country or countries. This is often the better course, particularly if the proposer has branches overseas. Where the accident happens is the material consideration.

Goods imported from abroad are at times concerned, and this usually means that a distributor in this country must be regarded by the underwriter as more in the position of a manufacturer than that of an intermediary. The reason is that it is possible only in limited circumstances to effect service of proceedings outside the United Kingdom, so that there is no effective right of recourse against a manufacturer who is outside the jurisdiction of the English courts. The underwriter takes this into account in the rate to be charged.

The extent of the proposed indemnity must be clearly understood, and where any special agreements have been entered into, for which an indemnity is needed, the insurers may not be prepared to provide relief in identical terms. Moreover, ordinary products liability and defective workmanship have at times to be distinguished, for fear there may be any misunderstanding in the proposer's mind. In these days, indemnities for defective workmanship are at times provided, and, once again, much depends on the type of product which is concerned. A simple distinction may be drawn by stating that products liability should be regarded as intended to concern goods in new condition with no alterations required, while defective workmanship indemnities should relate to work upon goods, including those types of activities which deal with installations and erections. In some undertakings both kinds of activity are carried on, and enquiries are then particularly important.

The underwriter must also consider whether he is dealing with goods where claims could be made on the basis that such goods have failed to fulfil their function. Seeds are an illustration, for an indemnity may be required against claims because the seeds prove to be of inferior quality and/or because they do not germinate and thus do not fulfil their function.

As a rule, the indemnity is arranged on a losses occurring basis, which means that the accident or illness must occur during the period of the insurance. The goods may have been sold in an earlier year. The risk is much heavier if cover is required in respect of claims which may arise out of the sale or supply of goods during the year, whether the claims arise in that year or at a later date. This is not often done. Yet again, a loss

may be discovered during a period of insurance arising out of an accident that occurred before the insurance commenced.

In some circumstances, there can be a connection between products liability and professional liability. The pharmaceutical chemist may use inferior goods and also make mistakes in the mixing of medicines.

Rating

It is customary to rate products liability indemnities on the gross turnover because this is a satisfactory measure of the extent of the risk. A rate per cent. (or per mille) may be applied according to the cash turnover, but in some trades the tonnage or gallonage or the number of articles produced may give a better guide. The rate for a turnover of £10,000 can hardly be compared with that for a turnover of £1,000,000 or more per annum.

Probably the tonnage, gallonage, or number of articles produced is the fairest assessment, although increases in prices are often connected with inflation and are reflected indirectly in higher damages awarded.

The premium is usually adjustable, and, in any event, its size depends on the limit(s) of indemnity selected.

The Limits of Indemnity

There is often a limit for any one accident and also for any one year of insurance. It has also been suggested that a further aggregate limit might be advisable, or alternatively a discovery basis instead of being guided by any one occurrence. Certain goods might be defective and when some unknown illness occurred, it could eventually be traced to the goods, so that many claims would be made, some of which would relate to illness suffered two or even three years ago. But whether or not there were liability would depend on the wording of the indemnity.

It is not always easy to know whether two or more claims have arisen out of a single cause, and this is especially relevant where the limit per year is much higher than that for any one occurrence. It may in some circumstances be desirable to impose the same limit for any one year as for any one accident.

Sometimes, too, it is desired to cover retroactive losses, and in such circumstances it must be seen that the reinsurance treaty affords similar protection. The territorial limits in a treaty must be borne in mind, if it is desired to grant world-wide cover or at any rate cover applicable to certain overseas countries.

Endorsement Wording

If products liability cover is provided by an extension of an existing policy, a wording on these lines may be used:

Memorandum. Notwithstanding Exception . . . this Policy is extended to indemnify the Insured in respect of accidents as within described occurring anywhere in due or alleged to be due to:

- (1) the action of
 - (a) any commodity sold or supplied by the Insured;
 - (b) anything contained or alleged to be contained in such commodity;

- (2) defects in the containers of such commodity

Provided always that the liability of the Company under this extension of the Policy shall not exceed the sum of £..... in respect of any Period of Insurance in addition to costs and expenses as within defined. Subject otherwise to the Terms Exceptions and Conditions.

This wording has to be modified if wider protection is provided; the reference above is to "any commodity sold or supplied".

Where a separate policy is issued, its terms depend on the views of the individual insurer. Fire and explosion liability may be excluded, and there are conditions peculiar to this type of indemnity, such as non-contribution and the observance by the insured of precautions.

CHAPTER X

LIFT INSURANCE

The provision of insurance protection in respect of third party risks arising out of the use of lifting machinery is largely the concern of engineering insurers because they have more extensive facilities for dealing with the mechanical features of the business than have those companies which do not operate in this field. Nevertheless, practically every composite company writes lift business, and when technical advice is needed such information is readily obtainable, either from an engineering insurer, or from a competent firm of lift engineers. Many such firms specialise in the provision of inspection and maintenance services for lifts which they have not necessarily constructed.

Lift insurance, in the widest sense of the term, comprises an indemnity in respect of liability for accidents which cause bodily injuries and sometimes damage to the property of third parties, arising out of the use of:

- (a) Passenger lifts, passenger and goods lifts, and lifts used wholly for the conveyance of goods.
- (b) Hook-hoists of various kinds, generally met with on warehouse and factory premises, and cranes, usually to be found on buildings in course of erection, in factories, on wharves, and in other locations where it is necessary to move materials from a lower to a higher plane, and *vice versa*, or to remove heavy materials from one place to another on the same site.

As with other kinds of engineering insurance business, insurers aim at the reduction of the possibility of the occurrence of accidents, as well as the provision of an indemnity in respect of claims arising out of accidents which may occur. Thus, regular inspections of machinery by skilled workmen are stipulated as an essential condition to the providing of a third party indemnity in respect of accidents arising out of its use although, in practice, this strict rule may be modified where the lifting machinery is far removed from the presence of third parties. Inspection services receive further attention on page 149.

LIFTS

These are to be found in private and business buildings and they vary considerably in construction. Electric power is now the principal motive force used, and it is for this purpose rapidly superseding hydraulic power, although at one time the latter was popular.

Lifts, in general, may be described as cages so made as to ascend or descend in a shaft constructed in the building in which they are fitted. The cage is raised or lowered by steel ropes passing over pulleys at the top to balance weights, which may run on steel or wooden guides, either inside the lift shaft itself or outside the building. The balance weights, for electric lifts, are so adjusted as to be heavier than the cage itself, but lighter than the cage fully loaded, for by this means the minimum power is needed to raise and lower the cage in the shaft.

Electrically-driven lifts rely upon an electric motor for the necessary power to raise or lower the cage, and the power is usually transmitted through a worm gear at the head of the shaft. Hydraulic lifts depend for their action upon a cylinder, in which is inserted a ram and water under high pressure. When the water under pressure is allowed to enter the cylinder past the control valve, the ram is pushed outwards from the cylinder, thus providing the motion to raise the cage. When the cage is attached to the ram head, this constitutes the direct-acting type of hydraulic lift, but there are other kinds in which multiplying sheaves are used, attached to the head of the ram.

While an electrically-operated lift is worked by switches, either in the cage itself or at the various landing stages, an hydraulic lift is operated by means of a rope passing vertically through the cage or by means of a tiller lever where the speed is so great as to make it impracticable for the attendant to grip the control rope by hand.

SAFETY DEVICES

Within recent years, lift designers have applied themselves to ensuring increased safety in the use of lifting machinery, and it is almost unknown for a modern lift to fall down the shaft. The following are the more important safety devices now in common use.

1. Safety Gear

The cage safety gear is now practically a standard part of the equipment for modern electric passenger or goods lifts. It usually consists of a pair of serrated steel cams, attached to either

side of the cage, and so fixed as to grip the guide rails and sustain the cage in the event of one or more of the lifting ropes breaking or becoming displaced from their sheaves.

There are various methods of operating the safety gear and bringing it into action in an emergency. One method depends upon unequal tension of the ropes, another upon a slack rope or safety rope, and another upon a governor device.

2. Governor Gear

For high buildings and particularly where high speed lifts are used, it is usually arranged for the safety gear to be brought into engagement in the event of excessive speed, as well as for the other causes mentioned in the preceding paragraph. For this type of lift, it is common practice to use a governor which, upon a predetermined speed being exceeded, causes the safety rope to be gripped, and this, in turn, pulls into action the safety gear attached to the cage.

3. Limit Stops

Devices to prevent the lift over-travelling in either the "up" or the "down" direction, are fitted. For rope-controlled lifts, this is generally effected by fitting a stop on the control rope, at the top and bottom limits of travel. When the cage reaches the limit of travel, a tappit plate attached to it comes into operation and causes the control rope to move the valve to the "off" position, thus bringing the cage to rest. In electric lifts the same object is attained by placing the limit switch in the control circuit of the motor and it is arranged so that it is opened by the cage at either limit of travel, thereby cutting off the current and stopping the motor.

4. Electrically-Interlocking Gates

It is now an almost universal practice to fit electro-mechanical locks to the landing gates, on both passenger and goods lifts. These locks have electrical contact inter-connected with the control circuit and are arranged so that a gate cannot be opened when the cage is away from the landing, or so that the lift will not operate unless each landing gate is closed and locked. This arrangement ensures that the landing gate must be closed before moving the cage away from the corresponding landing.

SURVEYS

Inspections are more often than not periodically undertaken by the makers or other qualified engineers, but it does not always follow that the persons who perform such work will pay attention to all features which affect the safety of third parties unless

the work is undertaken by the engineering department of an insurance company which is fully aware of the third party insurers' point of view. It is therefore the practice of some insurers to arrange for third party surveyors to inspect lifts proposed for insurance, with a view to making sure that, in addition to mechanical security, all reasonable precautions are taken to minimise the risk of accidents.

Passenger lifts are usually better risks, from the third party insurance standpoint, than are combined passenger and goods lifts and those constructed simply and solely for the conveyance of goods. Passenger lifts are built with considerable regard for the safety of human life, and at the present time are fitted with elaborate devices to ensure this. When, however, lifts are designed also or exclusively for the carriage of goods, the same degree of care is not always exercised, particularly as regards interlocking devices for gates and similar safety devices. Many of the older goods lifts have no gate to the cage, and the landing door openings are often inadequately protected.

The lift shaft must be satisfactorily protected throughout its height, for the lift policy provides an indemnity in respect of all accidents to third parties arising out of the apparatus, whether the person injured is being conveyed or not. Thus, legal liability for an accident to a person falling down the shaft owing to insecure gate fastenings would be within the terms of the policy, as would also liability for injuries caused by projections on any part of the structure.

The surveyor will also satisfy himself that the lift is well looked after and that minor defects receive prompt attention. If at the time of the surveyor's visit it is found that gates (not electrically-interlocking) have been left open on landings, arrangements will have to be made for better supervision of those responsible for the lift. The risk of over-loading should be regarded from the point of view of ability to crowd more persons on the lift floor than the cage is constructed to carry. Care should be taken to observe that where cage gates are not provided there is no risk of persons standing to the front of the cage and hitting their heads on projecting floor ledges. This means that the lift wall in which the gates are fitted should be fenced throughout its height, and be free from projections of any kind.

PERIODICAL INSPECTIONS

It is a condition of all lift policies that the apparatus be periodically inspected by an independent competent person, and usually it is stipulated that this shall take place about three

times a year. Service lifts, well removed from the public, may sometimes justify departure from this rule, but an annual inspection, at least, is required.

The independent examination of lifting machinery is essential, not only by reason of the fact that by such means defects in the apparatus can often be detected in their early stages but also for the reason that proper precautions are an invaluable answer, after an accident has occurred, to an allegation of neglect in upkeep. The mere fact that the owner has gone to the trouble of employing persons reasonably to be regarded as competent indicates care in the use of a machine which, if neglected, may obviously become a source of danger to others. Inspections carried out by the insured's employees, though recorded in a book kept for that purpose, can hardly be so convincing in evidence as the reports of well-known engineering insurance company or lift engineers. There is also the advantage that a person not in daily contact with a particular piece of machinery is more likely to detect a gradually-appearing defect than one who may perhaps be too familiar with the mechanism.

Inspection services may be provided by the insurers, on payment of the requisite fees, when an endorsement is made on the policy to this effect. The insurers undertake to supply the insured with copies of the periodical reports.

SCOPE OF POLICY

Third party lift policies, although formerly restricted to an indemnity in respect of the insured's legal liability for accidental bodily injuries caused to any person (other than members of the insured's family, employees in his service, or in the service of any person engaged to carry out work for the insured) while in the lift, while entering or leaving, or otherwise caused by the machinery hatches, doors or other appliances connected therewith, now extend to cover damage to property, other than property being conveyed in the lift. Damage to clothing is usually covered, but damage to other property conveyed is properly within the scope of the engineering department and is not covered in the absence of a breakdown insurance which, as will be explained later, carries special inspection services.

RATING

Premiums for lift insurances are almost invariably charged at a fixed amount per lift and depend upon the limit of indemnity selected for any one accident, and the capacity of the lift,

expressed in the number of persons it is constructed to carry. Lifts with a carrying capacity of more than ten persons or 15 cwt. are usually more highly rated.

Somewhat lower rates are charged for service and goods lifts, while a small reduction may be allowed if lifts are used mainly for the conveyance of goods and only occasionally for passengers.

Railway lifts and cliff lifts call for special treatment and are outside the scope of this book.

BREAKDOWN INSURANCE

Most insurers are prepared, in association with their own engineering department or otherwise, to arrange for their lift policies to include breakdown risks. This may be effected (1) by the issue of policies covering both breakdown and third party risks, or (2) by endorsing the breakdown cover on the third party policy, or (3) by the issue of two policies.

Later in this chapter will be found the material portions of a policy designed to cover both the third party and breakdown risks in one document. The breakdown cover is afforded by a straightforward statement that "the Company will indemnify the Insured against damage to any Machine described in the Schedule caused by Breakdown thereof" and the construction of this operative clause is governed by reference to the definitions of "Machine" and "Breakdown" respectively appearing in the policy. (See p. 157.)

Premiums for breakdown cover are based upon the capacity of the electric motor or hydraulic power unit used, together with the limit of indemnity required under this heading. The provision of periodical inspections of the lift, such as to satisfy the inspection requirements previously mentioned, is incidental to any breakdown insurance.

MAINTENANCE CONTRACTS

Apart from the breakdown cover and specific inspection services already mentioned, insurers are often willing to arrange for varying degrees of maintenance. These are within the scope of the engineering department and the three forms of contract usually available are here merely outlined.

Lift (Part) Maintenance Contract "A"

The insurers undertake:

1. That engineers shall attend once every fortnight/month to overhaul, clean and lubricate the mechanism of the lift described in the schedule of the policy.

2. To provide the cleaning material and the necessary lubricants.

3. To provide and fit at the inspection visits carbons for the motor and controller, when required.

Lift (Part) Maintenance Contract "B"

In addition:

4. To attend also at all reasonable times to adjust the mechanism, in the event of stoppage or irregular running between the periodical visits.

5. To execute at the time of the regular visits such adjustments and repairs as may be found necessary, which are not extensive and do not unduly prolong the time of the engineers in carrying out the service, so as to make the cost out of proportion to the rate of the contract.

Lift (Complete) Maintenance Contract "C"

As for "A," but in addition:

To repair or renew any parts including the lifting ropes which may become defective through fair wear and tear, when such renewal, in the opinion of the chief engineer of the insurers, shall be necessary for the satisfactory working of the lift.

To repair or renew the locks and switches on the gates of the various landings and on the cage which may become defective, through fair wear and tear.

The fees charged for such work depend upon the type and size of the lifts.

PROPOSAL FORM

1. Address of Premises at which the lifts or hoists are to be insured.

This information is needed for the purpose of description in the policy.

2. Trade or Business carried on at such address.

The trade or business carried on gives some indication of the extent to which the lift may be used and, consequently, the number of persons who may run risk of injury therefrom. A lift situated in a private dwelling house would, other things being equal, be a better third party risk than a lift of similar capacity in business premises, where eight or more hours per day of continuous use may be expected.

3. Safety Precautions

- (a) Is each lift or hoist shaft completely enclosed?
- (b) Is each approach to such shaft fitted with a gate?
- (c) Is each cage fitted with a gate and will it be securely fastened when shut?
- (d) Is the lift or hoist subject to Statutory Regulations? If so, please state which.
- (e) Are persons (employees or others) allowed to travel in the cage of any goods lift or hoist?

The answers to these questions have a bearing upon the precautions taken for the safety of those who use the lift and also of those who may approach the lift shaft. The third party lift policy is concerned not only with accidents to persons who travel in the lift, but provides an indemnity also in respect of accidents to others who may have occasion to come within its vicinity.

4. Inspections. Will the plant specified in the Schedule here-to be inspected and overhauled at regular intervals? If so, how often and by whom?

It is a condition of the policy that the plant shall be periodically inspected, and this must be done by an independent competent person rather than by one in daily touch with the plant. As a rule, the inspection service is arranged with the insurers' engineering department for an annual fee, but reports from an outside firm of lift engineers may be accepted instead. (See question 6 below.)

5. Defects. Is the proposer aware of any defects in any of the plant to be insured?

This is material, and if there is a defect this must be remedied before the risk is acceptable for insurance.

6. Policy Extensions. Does the proposer desire the policy extended to provide for:

- (1) Periodical inspection by the company's engineers and the furnishing of a report after each inspection?
- (2) Insurance against breakdown?
(N.B.—Insurance against breakdown includes periodical inspection by the company's engineers and the furnishing of a report after each inspection.)

- (3) Insurance against damage to surrounding property consequent upon breakdown?
- (4) Insurance against damage to contents of lifts or hoists consequent upon breakdown?

Insurance under headings (3) and (4) can be provided only in conjunction with breakdown insurance and the insurer's liability is restricted to the balance, if any, of the sum insured after paying the cost of making good the damage to the lift.

N.B.—Breakdown insurance of a complete electric lift includes the risks of breakdown of motor(s) and control equipment.

The risks of damage to surrounding property by the apparatus, whether belonging to the insured or not, are properly within the scope of the engineering department, but as this department usually operates in close association with the third party department, a policy to cover such risks may generally be arranged with either.

7. Schedule of Lifts and Hoists

(Each lift or hoist to be described on a separate line)

Type Passenger Lift, Goods Lift or Hoist	Maker's Name	Date of Make	Motive Power	If Electric, number of Motors and H.P. of each	Method of control —car switch, push button or rope	Whether operated only by an employee.	Carrying capacity in cwt.s, and persons	Dimensions	Number of floors served	Sum Insured for Breakdown Insurance

Here are given the essential details for the calculation of the third party premium, which depends partly upon carrying capacity and partly upon the limit of indemnity selected; also particulars for the description of the lift in the policy.

POLICY FORM

There is some variation in the expression of the indemnity provided, since all insurers do not subscribe to the same style of wording. The form used here is in wide terms and includes breakdown risk.

Operative Clause

SECTION I—Damage by Breakdown. The Company will indemnify the Insured against damage to any Machine described in the Schedule caused by Breakdown thereof.

The liability of the Company under this Section for any Machine shall not exceed in the aggregate in any Period of Insurance the sum set against such Machine in the Schedule as the Limit of Indemnity in respect of this Section.

This cover has been discussed already under the heading of Breakdown, see p. 151.

SECTION II—Liability to the Public. The Company will indemnify the Insured in respect of accident caused by through or in connection with any Machine described in the Schedule against all sums which the Insured shall become legally liable to pay as compensation for

- (1) death of or bodily injury to any person not engaged in and upon the service of the Insured under a contract of service or apprenticeship at the time of the accident.
- (2) (a) damage to property not being carried in or on the Machine nor belonging to or in the custody or control of the Insured;
- (b) damage to personal effects being carried in a passenger lift.

The liability of the Company under this Section for all compensation payable in respect of or arising out of one occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause in connection with any Machine shall not exceed the sum set against such Machine in the Schedule as the Limit of Indemnity in respect of this Section.

In respect of a claim for compensation to which the indemnity expressed in this Section applies the Company will also indemnify the Insured against

- (a) all costs and expenses recovered by any claimant from the Insured and
- (b) all costs and expenses incurred with the written consent of the Company.

In the event of the death of the Insured the Company will in respect of the liability incurred by the Insured indemnify the Insured's personal representatives in the terms of and subject to the limitations of this Policy provided that such personal representatives shall as though they were the Insured observe fulfil and be subject to the Terms Exceptions and Conditions so far as they can apply.

The cover afforded under this section follows closely the cover provided under a general third party policy except that the accident must have been caused by or through or in connection with any lift or hoist specified in the schedule.

Substantial limits of indemnity are essential in lift insurances, for while lift accidents are fortunately not of frequent occurrence, they are likely to prove expensive to settle if persons of substance are involved in them. It is advisable, therefore, to ensure that the limit per accident is selected according to the number of persons that the lift is constructed to carry.

Exceptions—SECTION I

The Company shall not be liable under this Section to pay for

- (1) (a) deterioration of insulation or the wearing away or wearing out of any part of any Machine caused by or naturally resulting from use or exposure;
- (b) gradually developing flaws defects cracks or partial fractures in any part of any Machine not necessitating immediate stoppage of such Machine although at some future time repair or renewal of the parts affected may be necessary;
- (c) repair or renewal of fuses collecting brushes or electrical contacts which make and break a circuit in ordinary working or springs or in the case of hydraulic machines faces or wearing parts of operating valves and packings or leathers;
- (d) repair or renewal of pneumatic or electric door or gate operators air compressors or their connected pipes and valves call or position signalling apparatus or rectifiers for the main current supply to the Machine;
- (e) tightening up or refitting or renewal of keys or the remaking of joints of any kind.
- (2) breakage or sudden overheating of bearing steps or bushes;
- (3) loss of use.

Apart from (3) above, the exceptions to the breakdown cover merely define more closely the limits of the breakdown insurance. Loss of use of a lift is outside the scope of the indemnity.

General Exceptions

The Company shall not be liable in respect of

- (1) damage or liability for damage to property caused by or

arising out of fire lightning explosion flood earthquake or extraneous cause;

- (2) damage or liability caused by or arising out of strike lock-out riot or civil commotion;
- (3) damage or liability arising while any Machine other than a Machine controlled by a push button device is to the knowledge of the Insured being operated by an attendant under 15 years of age or if on the occasion of the accident the load carried is in excess of that specified in the Schedule;
- (4) damage or liability caused by or arising out of wilful negligence of the Insured;
- (5) liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement;
- (6) any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power.

The general exceptions apply, apart from (5), to both the breakdown and third party sections of the cover. It is no part of breakdown cover to make provision for the insurance of the risk of fire damage to the lifts. They would normally be covered under the fire policy on the building containing them as part of the building or, if movable hoists, they could be covered under a specific item in a fire policy. Moreover, while there is a general exclusion of damage to property caused by fire, including the property of third parties, there is no corresponding exclusion of bodily injuries so caused.

The exclusion of damage or liability from extraneous cause is difficult to define, but may be taken as intending to exclude claims from risks outside the lift itself, e.g., subsidence or collapse of the building.

DEFINITIONS

Machine

"Machine" shall mean all parts of a lift or hoist proper up to and including when actuated by

- (i) electrical power, the main switch or circuit breaker situated adjacent to the motor or motor generator;

- (ii) hydraulic or pneumatic power, the valve controlling the direction of movement;
- (iii) belt, the belt pulleys directly geared to the winding drum or sheave;
- (iv) manual power, the hauling rope, chain or crank handle; but shall not mean or include the enclosure (other than the landing gates) of a lift or hoist well, the gear chamber, any supporting structure, foundations, bells, buzzers or their equipment, lighting fittings, lighting, wiring, thermionic valves or air receivers.

This definition represents an attempt to provide in one and the same document definitions suitable for breakdown risks cover for all types of machines likely to be met and in relatively few words makes clear just how far the breakdown cover is intended to apply. The parts excluded from the definition do not lend themselves to cover of this kind for reasons readily apparent, e.g., it would not be expected that such cover should apply to the surrounding walls comprising a part of the building and such items as bells, wiring, and the like are more in the category of minor accessories than parts of the machine proper.

Breakdown

"Breakdown" shall mean

- (a) the actual breaking of any part of a Machine causing sudden stoppage of such Machine and necessitating repair or replacement before working can be resumed;
- (b) electrical burn-out of any part of a Machine;
- (c) the actual and complete severance of a rope but not breakage or abrasion of wires or strands although replacement is necessitated thereby;

while the Machine is being used under ordinary working conditions.

This definition follows the procedure of engineering insurers and expresses the scope of the indemnity usually provided under breakdown policies covering items of plant not, of necessity, solely associated with lifts. It is outside the scope of this book to discuss the technicalities of engineering insurance and practice, but the exceptions specifically relating to breakdown risk are referred to above.

CONDITIONS

1. Notice of Accident or Breakdown

The Insured shall give notice in writing to the Company as soon as possible after the occurrence of any accident with full

particulars thereof. In addition in the event of damage to which Section I applies the Insured shall give immediate notice thereof by telegram or telephone to the

Company Limited.

Telegram: Telephone:

also by letter to the Company at its Head Office.

It is usual practice in third party policies to require immediate notice of accidents in writing. In the event of a breakdown, however, urgent notice is required by telegram or telephone to the insurer's engineering department (of which the telegraphic address and telephone number are usually given), such notice to be confirmed in writing.

2. Right of Insurer to repair, reinstate, replace or pay in cash

In the event of damage to which Section I applies the Company may at its option repair reinstate or replace the Machine or any part thereof or pay the amount of the damage.

This condition records the right of the insurer to settle the claim in respect of breakdown as may be considered fit.

3. Authority to Insured to proceed with certain repairs

In the event of damage to which Section I applies the Insured may without prejudice to any liability of the Company proceed with minor repairs subject to compliance with Condition No. 1 provided that any damaged part be kept for inspection by the Company and that the repair be carried out to the satisfaction of the Company. Subject to the foregoing special privilege the Company shall not be liable for the cost of any repairs undertaken by the Insured without the permission of the Company in writing. The Company shall not be liable in respect of any further damage to any damaged Machine until such Machine shall have been repaired to the satisfaction of the Company.

The insured is authorised to proceed with minor repairs (covered by the breakdown section of the policy), provided that he observes the condition about notice of accidents. In order to avoid further damage, however, the machine may not be used until the insurer has indicated satisfaction with the repairs.

4. Alteration in Machine or Working Conditions

The Company shall be notified of any proposed alteration or addition to any Machine and of any proposed change in situation use or working conditions and if the Company shall not approve the Company may cancel forthwith the insurance in

respect of such Machine and in such event the Insured shall become entitled to the return of a proportionate part of the Premium or Renewal Premium corresponding to the unexpired period of insurance. If any such alteration addition or change be made or the Maximum Load as specified in the Schedule be exceeded without the consent of the Company thereto in writing having been first obtained no liability shall attach to the Company in respect of such Machine.

This condition is inserted to relieve the insurer from having to accept for breakdown insurance a risk which may differ from that originally undertaken.

5. Insured to take Precautions

The Insured shall at all times by personal or other competent supervision take all proper precautions to keep each Machine its plant ways works machinery appliances and approaches in a proper state of repair and to enforce the observance by all persons in the employ of the Insured of all proper safeguards and precautions against breakdown or accident and if any defects or conditions of working be discovered which render the risk more than usually hazardous the Insured shall forthwith notify the Company and take steps to remedy such defects or conditions and shall in the meantime cause such additional precautions to be taken as circumstances may require.

A similar condition is found in all third party policies.
It is adapted to particular needs and extends also to the breakdown cover.

6. Insurer's right to inspect

The Company shall have the right at all reasonable times to inspect and examine any Machine and the Company will for the mutual benefit of the Insured and the Company make periodical inspections of every such Machine. The dismantling and re-assembling in connection with any examination shall be carried out by the Insured on such date or dates as the Company and the Insured shall agree for the making of such examination. The Company will furnish to the Insurer reports on the results of such inspections and examinations.

This affords the insurer the necessary facility to inspect and examine the apparatus at any time. This is essential when, as under a breakdown insurance, access must be permitted for the purpose of inspection. The right may also be of value after an accident, but opportunity would have to be afforded even in the absence of the condition.

SCHEDULE

The Insured		Policy Number T						
Period of Insurance (a) From To (b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept the Renewal Premium		Renewal Date						
Premium Section I £ _____ Section II £ _____ =====		Renewal Premium Section I £ _____ Section II £ _____ =====						
Situation of Machine								
Machine				Limits of Indemnity				
Item No.	Description and Maker's No.	Maker's Name	Date of Make	Maximum Load Persons	Cwts.	H.P. of Motor	Section I (Break-down)	Section II (Public Liability)
Signed on the				Examined				

CHAPTER XI

OTHER INDEMNITIES (I)

In this chapter and the succeeding one other types of indemnities are considered. The general principles are common to all these indemnities but separate proposal and policy forms are drafted in order to appeal to persons or firms engaged in particular activities, and the indemnity afforded is adapted to their requirements.

Third party drivers' indemnities were the first type of third party contract to be devised, and such indemnities are therefore dealt with first, although the business has suffered by reason of the invention of the internal combustion engine. Recently, moreover, it has become customary to discontinue the issue of separate policies. The third party indemnity is included in the third party (general) policy, to which can be added, if desired, insurance against loss of or damage to horse-drawn vehicles and theft of, and/or fatal injury to, horses.

Property owners' indemnities are next considered because they also date from the previous century, and then the other classes of business are studied in alphabetical order.

THIRD PARTY DRIVERS' INDEMNITIES

These indemnities are designed for the protection of the owners of horse-drawn vehicles. The protection afforded can be considered under three headings whether provided by a separate policy or otherwise, viz.:

1. Liability to third parties.
2. Loss of or damage to vehicles and theft of horses.
3. Fatal injury to horses.

1. Third Party Indemnities. The insured is indemnified (subject to the limit of indemnity expressed) in respect of his legal liability for death of or bodily injury to, or damage to the property of, third parties caused by or through or in connection with any horse or horse-drawn vehicle owned by the insured or for which he is responsible. The loading and unloading risks are included, but beyond the limits of any carriageway or thoroughfare the protection applies only where the loading and unloading are done by the driver or attendant of the vehicle.

A personal indemnity is provided for the driver but passenger liability is not insured (except unsuspected passengers).

2. Loss of or Damage to Vehicles is insured, while any such vehicles are attached to horses and are being used in the insured's business. The cover includes accidental damage to harness, tyres and lamps when the horse or vehicle is lost or damaged at the same time. The risk of fire is not excluded. Loss by theft of any horse owned by the insured or for which he is responsible occurring while such horse is attached to a vehicle is insured under this section. There is a limit of £100 for any one vehicle or horse or such larger sum as may be specified.

3. Fatal Injury to Horses owned by the insured or for which he is responsible may be covered, provided that the death of an animal is directly due to an accident occurring while the horse is attached to a vehicle which is being used for the purposes of the insured's business. The insurer's liability is not to exceed the reasonable market value of the horse at the time of the injury nor the sum of £100 or such larger sum as may be specified as the estimated value.

Under the first heading, no liability attaches to the insurers by virtue of any agreement which would not have attached in the absence of such agreement. Liability is also excluded for accidents to passengers or to employees (in the usual terms), for damage to bridges, viaducts, weighbridges, roads or anything beneath, caused by vibration or by the weight of the vehicle, loaded or unloaded, and damage to property held in trust by or in the custody or control of the insured or being conveyed by the vehicle. Under all headings, war risks are excluded.

Basis of Rating

Attention in rating is given to the following factors:

- (a) The insured's business.
- (b) Address from which vehicles are used.
- (c) Number of drivers employed in driving at any one time during the year, including the insured.
- (d) Limit of third party indemnity.

Premiums

Premiums for comprehensive cover are computed at rates per driver and the main factor is the situation of premises from which the vehicles are used. The limit of indemnity under the

third party section is also material and rates are graduated for various limits, any one accident. These two factors—district and limit of indemnity—are likewise the considerations in rating third party only insurances, while the rates for the other sections of the cover, quoted separately, are dependent upon district.

When vehicles or horses in excess of £100 in value are to be insured, a rate per cent. is charged on the excess value.

Where the number of drivers exceeds, say, 25, the normal rates cannot always be justified, on account of favourable past experience. Special consideration may then be given to the risk and rates quoted upon its merits. This concession is not confined to horse-driving risks, but may also be granted for third party cycling risks.

Passenger Risk

For vehicles constructed for the conveyance of passengers, or those which can be used for that purpose if desired, the insured should arrange for his policy to be extended to indemnify him in respect of claims made against him by passengers, on account of bodily injuries occasioned while mounting into, riding in, or dismounting from, such vehicles. In some instances, accidental damage to the property of such persons may also be covered at an appropriate premium.

Premiums for this risk are calculated on the maximum number of seats which can be in use at any one time and on the limits of indemnity required. If there are less drivers than there are vehicles, the premium for the passenger risk is calculated on the seating capacities of the largest vehicles owned by the insured. Indemnity against liability for accidents to unsuspected passengers is always insured (see p. 163).

Excess Rebates

When the insured is prepared to bear the first £5 or more under the accidental damage to vehicles section, a premium reduction of so much per driver for this part of the risk is usually allowed. Similar rebates are afforded if the insured elects to bear the first amount of each and every third party claim. No excesses are applicable under the fatal injury to horses indemnity.

Excess rebates generally may be justified by the fact that the insurers are relieved of the expense of a number of small claims, although the advantage may be of doubtful value if the insured is permitted to deal with third party claims which, if mishandled, may frequently exceed the amount of the excess by the

time the insurers take them over. This may be partly overcome by the insurers providing that they will settle all third party claims, and look to the insured to repay them the amount of the excess subsequently, as in motor vehicle insurance practice.

Trade Cycles

Third party (general) policies are usually issued to include third party risks in connection with trade cycles. Accidental damage risks can also be added, if desired, although where cover other than third party risks is provided, it is more usual to issue a separate policy.

The rates for such cycles are subject to the same district classifications as those applied to horse-drawn vehicles, but they are lower. The accidental damage section is subject to a compulsory excess of 10s., but this does not apply to fire and theft risks mentioned below.

When required to do so, insurers are frequently willing to extend such policies to provide for loss of the cycle, on account of fire or theft, at an additional premium of, say, 10s.—provided that the value of the cycle does not exceed £15. Higher rates are charged for larger sums insured.

Hand Carts

The third party risk in respect of hand carts, such as milk prams and hand carts used by bakers' roundsmen and others, is included in the third party (general) policy. Both third party and accidental damage risks may be insured at rates varying with the district from which the hand carts are used, the third party limits selected and the value of the hand carts.

Contingent Liability Policies

When one party makes arrangements with another for the supply of vehicles, with horses and labour in connection therewith, there is always the possibility that the principal may find, when an accident occurs, that an action is commenced against him rather than against the contractor, or he may be joined as defendant with the contractor. This is even more likely to happen when the vehicles supplied bear the name of the principal, as well as of the contractor, for advertisement purposes or otherwise.

In any event, the possibility of liability resting upon the principal is often somewhat remote and policies, when effected, are designed primarily to relieve the insured of his liability to pay the law costs necessarily incurred in his defence should an action

be commenced against him, or should he be joined with another as a defendant.

Although the possibility of liability resting upon the principal may be remote, it is by no means certain that on every occasion liability will be nominal. Much must depend upon the extent to which the principal will retain control of the work while it is in progress and the extent to which, if at all, the principal's employees may be concerned in the work as, for example, in assisting in the loading of a vehicle before it leaves the principal's premises.

The information generally necessary to enable such risks properly to be assessed is as follows:

- (a) How many contractor's drivers will be engaged on the work?
- (b) What will be the estimated annual contract price?
- (c) Does the principal employ his own drivers?
- (d) Does the principal or the contractor supply respectively the vehicles, horses, and drivers?
- (e) Does the name of the principal appear on any vehicle used for the purposes of the contract?
- (f) Do any employees of the principal accompany the vehicles? If so, what are their duties?
- (g) What control does the principal retain over the carrying out of the work?
- (h) Does the contractor or his driver receive any instructions from the principal as to the time or way in which the work is to be done?
- (i) Who loads the vehicles? Is there any custom of trade which requires the principal to load the contractor's vehicle for him?

A separate policy may be issued for contingent liability and premiums for such insurances depend on the individual circumstances. For convenience, they are usually charged at a percentage rate on the total sums paid to the contractor per annum, the rate depending on the limit of indemnity required and the size of the contract.

PROPERTY OWNERS' INDEMNITIES

A property owners' indemnity is concerned only with liability for accidents arising out of structural defects, and it is suitable for a non-occupying owner, so long as he has no maintenance staff. Even then, he might be involved in a claim, whether or not legally liable, during the carrying out of repairs or decorations to the premises, and the wider cover afforded by a third

party (general) policy is preferable, since the greater includes the lesser.

Nevertheless, separate policies are still issued and they are considered below.

PROPOSAL FORM

Apart from the questions mentioned in Chapter V, the following enquiries are commonly to be found in proposal forms for property owners' indemnities.

1. Interest of the Proposer. Is proposer the owner, tenant, agent or trustee of the property?

It is material to know whether the proposer is the owner or occupier of the property for which an indemnity is required. Liability for accidents by reason of the state of the premises often rests on the occupier, rather than on the owner. Where an agent for property desires to insure, it should be ascertained whether the agent's liability alone is to be covered, or whether a joint indemnity for the owner and the agent is required.

2. State of Repair. Will the property be maintained in good repair?

A negative answer would call for investigation.

3. Periodical Inspections. Will the property including the drains be periodically inspected for the purpose of detecting defects?

- (a) If so, by whom and how often will inspections be made?
- (b) Will any defect be remedied immediately on discovery?

The periodical inspection by the proposer, or his agent, of all properties proposed for property owners' indemnities is essential, since it is only by this means that the risk of accidents occurring can be reduced. The Housing Act, 1957, gives the landlord the right to inspect properties coming within its provisions and the omission to take advantage of this right would seriously prejudice the landlord's position if an accident should occur. The competence of the person undertaking the inspection is important because a person unfamiliar with property management will probably not detect defects in their early stages, and thus the possibility of accidents is, in such circumstances, increased. It is essential, once defects are discovered, that they be remedied immediately. The knowledge of defect on the part of

the landlord or his agent will often make the former liable for accidents until it is rectified, although steps have been taken and the order for the work to proceed has been given.

4. Sanitation Risks. Is it desired that the policy should extend to indemnify in respect of claims on account of illness arising from defective sanitary arrangements? If so:

- (a) when were the drains last inspected?
- (b) will they be periodically inspected by a competent person for the purpose of detecting defects? If so, by whom and how often will inspections be made?
- (c) will any defect be remedied immediately on discovery?
- (d) are the drains now in good order?

The ordinary form of policy often excludes liability for illness so caused and insurers will usually need to be satisfied that the drains are in good order and that they will be so maintained before they will accept liability for this risk.

5. Staff. Will any caretakers, cleaners and the like be employed at the property? If so, state number of each.

6. Maintenance Work. Will any maintenance work be carried out at the property by employees of the proposer? If so, state estimated annual wages expended in connection with such work.

If an affirmative answer is given to either of these questions, it indicates that a property owners' indemnity is not sufficient and a third party (general) policy must be arranged.

7. Service Lifts. State number and carrying capacity of any service lifts at the property.

Lifts are normally excluded by the terms of the policy and special arrangements have to be made to include this liability where necessary.

8. Description of Property.

Number			Address	When Built	Annual Rental Value	No. of Tenants
Houses	Tenements	Shops				

The details thus disclosed form the basis of rating, when the limit of indemnity required for any one accident is taken into account. The age of the premises is important and their occupation, whether houses, tenements, shops, factories or otherwise, gives some indication of the extent to which members of the public are likely to come into contact with them. The annual rental values show whether or not the properties are likely to come within the scope of the Housing Act, 1957.

POLICY FORM

The policy form follows the general principles observed in the drafting of third party indemnities, and the reader should refer to Chapter V in which certain general features of third party policies are studied.

Operative Clause

Now this Policy witnesseth that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon, the Company will indemnify the Insured in respect of accidents caused by defects in any of the Buildings described in the Schedule (including landlord's fixtures and fittings in the Buildings) and the walls, gates and fences around and pertaining thereto, against all sums which the Insured shall become legally liable to pay as compensation in respect of

- (i) death of or bodily injury to any person not being a member of the family of the Insured nor a person who at the time of the accident is engaged in and upon the service of the Insured under a contract of service or apprenticeship,
- (ii) damage to property not belonging to nor held in trust by nor in the custody or control of the Insured or a member of the Insured's family or a person in the service of the Insured.

The liability of the Company under this Policy for all compensation payable in respect of or arising out of one occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause shall not exceed the Limit of Indemnity.

In respect of a claim for compensation to which the indemnity expressed in this Policy applies the Company will also pay

- (a) all costs and expenses recovered by any claimant from the Insured and
- (b) all costs and expenses incurred with the written consent of the Company.

The wording of this clause has been altered by many insurers within recent years in order to make the intention of the contract clearer and to provide the widest possible indemnity. The primary intention of the contract is to provide an indemnity in respect of legal liability for defects in buildings, but the above wording should be noted—"accidents caused by defects in any of the Buildings described in the Schedule (including landlord's fixtures and fittings in the Buildings) and the walls, gates and fences around and pertaining thereto". It is not always clear whether such appurtenances as stopcocks which may be fixed in the pavement outside the premises are included in the term "Buildings", and many insurers make it clear in their proposal forms that liability for accidents by reason of defective stopcocks is provided for in their policies. Others require an additional premium if the risk is to be included, while still others specifically exclude from the policy claims by reason of defective stopcocks, unless extra premium is paid (see p. 173).

At one time, it was the custom to refer specifically in the operative clause to the inclusion of liability in respect of claims arising under the Housing Act, but it is now the general practice to refer to "all sums which the Insured shall become legally liable to pay as compensation" (or words to that effect), and this phrase is wide enough to include both common law and statutory liabilities.

Exceptions

The Company shall not be liable in respect of

- (1) damage to property caused by subsidence,
- (2) liability for illness due to defective sanitary arrangements,
- (3) liability arising in connection with
 - (a) any lift, elevator, hoist, crane or other machinery,
 - (b) explosion other than explosion of any domestic boiler,
 - (c) the carrying out of alterations, additions, repairs or decorations to any part of the Buildings,
- (4) liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement,
- (5) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

(1) Heavy claims might be involved for damage to property caused by subsidence, and in view of the moderate premiums charged for an ordinary property owners' indemnity, this type of liability must be specifically excluded.

(2) The indemnity, as explained below, may be extended in this respect, subject to the insurers being satisfied as to the state of the sanitary arrangements. An additional premium is often payable for this extension.

(3) (a) Lifts are installed in private dwellings, particularly in blocks of flats; hence, the need for this exception. If there is a lift, elevator, hoist, crane, or other similar machinery, the proposer should be encouraged to effect a separate policy. In any event, it would not be prudent to provide an indemnity without arrangements being made for the periodical inspection of plant of this kind or without knowing to what extent the risk of injury to members of the public was increased by its use. This exception makes it clear to the layman that lifts, hoists, and the like are not deemed for the purposes of the policy to be part of the structure.

(b) This exception calls for no comment.

(c) The liabilities concerned should be made the subject of a separate contract or contracts or a third party (general) policy should be recommended.

(4) This exception is common to almost all third party policies.

(5) This wording is common to the war risks exclusion clause found in all types of policies covering damage to property.

CONDITIONS

Two conditions call for comment:

1. **Subsisting Insurances.** If at the time of the occurrence of any accident to which this Policy applies there be any other indemnity or indemnities in respect of it in force—whether effected by the Insured or by any other person or persons—the Company shall not be liable to pay or contribute more than a rateable proportion of any sum payable in respect of such accident.

This condition, though common to many third party policies, is important in property owners' indemnities. This is because the insured may have effected a policy while at the same time his estate agent may have arranged another policy in the joint names of the insured and the agent, in which event the second policy may be called upon to contribute to a claim.

2. Maintenance of Premises. The Insured shall take reasonable precautions to prevent accidents and to comply with all statutory or other obligations and regulations imposed by any Authority and shall maintain the Buildings (including landlord's fixtures and fittings in the Buildings) and the walls, gates and fences around and pertaining thereto in a proper state of repair and if any defect be discovered by complaints from tenants or otherwise the Insured shall forthwith cause such defect to be made good and in the meantime shall cause such temporary precautions to be taken as the circumstances may require.

This condition is similar to the corresponding condition of the third party (general) policy. It specifically requires any defect discovered by complaints from tenants or otherwise to be made good, and that in the meantime such temporary precautions must be taken as the circumstances require. One of the reasons for this is that liability so often depends upon whether or not notice of a defect was received before an accident happened.

SCHEDULE

Number	Description of Buildings	Address of Buildings

POLICY EXTENSIONS

Sanitation Risks

Illness occasioned by defective sanitation is often excluded from a property owners' policy. In such circumstances insurers are usually willing to provide an indemnity in respect of claims

under this heading but in view of the number of persons who may be affected as the result of neglected drains, some insurers insist on a limit of indemnity for illness attributed to a single cause, irrespective of the number of persons who may be affected thereby, or limit their liability in any period of insurance.

The principal factors are the age and condition of the sanitary arrangements and these receive treatment in Chapter XIV.

Stopcock Risks

Where such liability is not included in the ordinary policy cover, an additional premium may be charged and an appropriate endorsement made on the policy.

ESTATE AGENTS

Estate agents frequently manage the properties of many of their clients and find it convenient to arrange a single policy to provide an indemnity in respect of accidents occasioned by defects in any of the buildings in their charge. A policy may be issued in the names of the estate agents, as agents for their respective clients, in which event the former arranges to debit the clients' accounts with their respective proportions of the total premium charged. If necessary, insurers give letters or certificates to show the properties mentioned in the schedule to the policy for the respective clients.

If a policy is issued in the joint names of the estate agents and their clients, a higher premium may be justified since there is the possibility of claims being brought against the agent, as distinct from the owner, and where both are joined as defendants in an action, additional law costs may become payable under the policy.

PREMIUMS

Premiums for property owners' indemnities are usually based on the number of houses and shops proposed, a fixed charge for each being made, provided that, for houses, the number of tenants does not exceed two. In view of present-day competition rates are very low, but higher rates are charged for shops. For houses, an additional premium is charged if the number of tenants exceeds two.

Minimum premiums are applied where the application of the ordinary rates does not produce a sufficient premium to cover the expense incidental to the issue of a policy.

Business premises, other than small shops, vary so much in the property owners' risks attaching to them, that each needs to be rated on its merits.

COMPREHENSIVE POLICIES ON PRIVATE DWELLINGS

Protection is provided under the popular comprehensive policies on the buildings and contents of private dwellings for liability to the public—the property owners' liability risk under the buildings policy and the general liability to the public risk arising out of occupancy under the contents policy.

Buildings. The indemnity provided under this policy is against claims made on the insured as owner (and not as a private householder occupying the buildings) in respect of accidents happening during the continuance of the policy in or about the "buildings" (as defined in the policy) resulting in bodily injury to or damage to the property of members of the public including tenants (with the usual exclusions). The limit in respect of any one accident or series of accidents constituting one occurrence is £100,000, with costs and expenses payable in addition. There is the usual indemnity to the insured's personal representatives.

Claims are excluded in respect of injury or damage arising out of or incidental to the insured's profession or business or the use of lifts or vehicles; also, contractual liability in the usual terms.

Contents. The corresponding section of this policy provides an indemnity against claims made on the insured (including the husband or wife of the insured) as a private householder occupying the private dwelling (and not as owner) in respect of accidents happening during the continuance of the policy in or about the private dwelling, domestic offices, stables, garages or outbuildings resulting in bodily injury or damage to property in similar terms to those mentioned above and likewise subject to a limit of £100,000 for any one accident.

The exclusions are similar but the exclusion of vehicles relates only to mechanically-propelled vehicles and, even then, claims arising out of the use of pedestrian-controlled gardening implements are included.

Combined Policy. The buildings and contents combined policy naturally provides both the separate indemnities described above. Moreover, under any of the policies it is possible to increase the limit of £100,000 for any one occurrence on payment of extra premium.

CONTRACTORS' "ALL RISKS"

The modern contractors' "all risks" policy often includes a third party liability section, and the indemnity provided by that

section is usually wider in scope than that afforded by the ordinary third party (general) policy.

The indemnity as a rule extends to the use of vehicles and engineering equipment on the site as tools of trade. The risk of subsidence is often included. Some modification of the contractual liability exception is almost always necessary. A contractors' "all risks" insurance is usually underwritten at a rate per cent. on the contract price and if the third party risk is included the rate is loaded accordingly.

Policy wordings vary within wide limits and are often adapted to the requirements of each proposal. A wording is given below for guidance only.

Liability to the Public

Section II

The Company will indemnify the Insured in respect of accidents happening in connection with the performance of the Contract against liability at law for damages in respect of

- (i) death of or bodily injury (including illness) to any person not being a person who at the time of the accident is engaged in and upon the service of the Insured under a contract of service or apprenticeship
- (ii) damage to property not belonging to nor held in trust by nor in the custody or control of the Insured

Where more than one party comprises the Insured each of the parties shall for the purpose of this Section be considered as a separate and distinct unit and the words "The Insured" shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties and the Company hereby agrees to waive all rights of subrogation or action which the Company may have or acquire against any of the aforesaid parties arising out of any accident in respect of which any claim is made hereunder

The total liability under this Section in respect of or arising out of one occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause shall not exceed the sum of ~~as the Limit of Indemnity~~

In respect of a claim for damages to which the indemnity expressed in this Section applies the Company will also pay

- (a) all costs and expenses recovered by any claimant from the Insured and
- (b) all costs and expenses incurred with the written consent of the Company

Provided that the Company may at any time pay to the Insured the Limit of Indemnity (after deduction of any sum or sums already paid as damages) or any lesser amount for which any such claim or claims can be settled and upon such payment the Company shall relinquish the conduct and control of and be under no further liability under this Section in connection with such claim or claims except for costs and expenses recoverable from the Insured or incurred with the written consent of the Company in respect of matters prior to the date of such payment

Exceptions to Section II

The Company shall not be liable under this Section in respect of

- (1) accidents caused directly or indirectly by or traceable to the bursting or explosion of steam boilers horse-drawn vehicles in Ireland the ownership or possession or use by or on behalf of the Insured of any mechanically propelled vehicle which is licensed for road use and for which a Certificate of Insurance is required aircraft ships boats or craft of any kind or foul berthing or passenger lifts
- (2) liability compulsorily insurable under the provisions of the Road Traffic Acts, 1930 to 1934
- (3) claims arising out of
 - (a) technical or professional advice furnished by the Insured or by any person acting on behalf of the Insured
 - (b) damage to any building structure or land caused by vibration or by the withdrawal or weakening of support due or alleged to be due to any operations of the Insured or any person acting on behalf of the Insured
 - (c) damage to property of any description due to the manufacture construction alteration repair or treatment of such property by the Insured or by any person acting on behalf of the Insured
 - (d) liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement
- (4) any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power

MEMORANDUM I

The Company may cancel this Section by sending seven days' notice by registered letter to the Insured at the Insured's last known address and in such event the Insured shall become entitled to the return of a proportionate part of the Premium for this Section corresponding to the unexpired period of insurance

DOG INSURANCE

Although "animals" are among the exclusions of the public liability (general) policy, insurers are usually willing to include liability for accidents caused by domestic animals. For dogs, however, a special comprehensive policy is obtainable from specialist insurers.

This canine policy covers various risks and one of the sections is public liability, that is to say, an indemnity is afforded in respect of liability for bodily injuries or damage to property of members of the public including damage to sheep, cows and other animals, game and poultry. The limit is £10,000 for any one incident or event, with legal costs and expenses in addition.

CHAPTER XII

OTHER INDEMNITIES (II)

In this chapter the remaining indemnities are studied. There is no significance in the order and the alphabetical sequence is continued.

ESTATES AND FARMS

The owners or occupiers of country estates and farms may find themselves liable to pay compensation to others for accidents arising not only from the negligence of their employees or by reason of defects in buildings but also on account of accidents caused by falling trees or branches. Where the land abuts on public highways, with overhanging elm trees or other trees known to develop defects, or where such trees are in proximity to the premises of others, to footpaths or other rights of way, the risk of accidents from these sources may be considerable. There may also be liability for the upkeep of open drains, ditches and hedges, all of which may prove to be sources of claims. The fact that claims may arise out of the letting of pastures to farmers, and in respect of illness caused to their animals by eating unconfined yew or other deleterious trees may be relevant, so far as regards estates.

The indemnity is wide enough to include liability for accidents occasioned by straying sheep, cattle and horses, and droving risks. The indemnity can be extended to cover fatal injury to certain of the insured's animals in specified circumstances (see question 7 below).

A survey is usually made, and premiums are charged on acreage, divisible into wooded, arable and pasture land. If necessary, an extra charge is made based on wages for hazardous work, such as that connected with quarries.

PROPOSAL FORM

- 1. Status.** Is the Proposer the Owner, Agent or Tenant?

This is a guide to the possible extent of liability.

- 2. Maintenance.** Will the buildings, fences, gates, etc., and machinery and estate or farm implements be kept in good order and repair?

This is a normal enquiry but specially worded in its application to estates and farms.

- 3. Public Roads.** Do any main public roads intersect or adjoin the estate or farm, or are there any public rights of way across the land? If so, give full details

Public roads and public rights of way across land must be taken into account and particularly where the land is wooded, since trees or branches might fall and injure passers-by. There may also be accidents on the roads by reason of negligent upkeep, and a private owner cannot plead the defence of non-feasance, which is available to a public authority (see p. 35).

4. Crop-spraying.

- (a) Will crop-spraying involving the use of dangerous substances be undertaken on the Proposer's premises

(i) by the Proposer? (i)
 (ii) by contractors? (ii)

If so, give full details.

- (b) Will crop - spraying, threshing or other work be undertaken on premises other than the Proposer's? If so, state estimated annual wages paid to employees engaged in such work.

(i) Crop-spraying	... £
(ii) Threshing	... £
(iii) Other work	... £

Crop-spraying is a recent development and in view of its importance the subject is dealt with separately on p. 181.

- 5. Special Activities.** Will any trade or business be carried on, such as Mining or Quarrying, Gravel or Sand-getting, Brick-making, etc.? If so, give particulars and state whether explosives will be used.

Work of this type has its own special risks. Quarries are considered on p. 121. Wherever there is excavation, care must be taken to see that the pit is guarded so that members of the public cannot fall to their hurt.

6. Trees.

- (a) Will all old trees adjacent to public highways be periodically inspected by a qualified person for the purpose of detecting defects? (a)
- (b) If so, by whom and how often will inspections be made? (b)
- (c) Will any trees found to be defective immediately be lopped or felled, as may be necessary? (c)

Defective trees may give rise to public liability claims based on nuisance or negligence, and it is material to know that there are periodical inspections made by an expert woodman.

7. Fatal Injury to Animals.

Is it desired to cover fatal injury to Proposer's cattle, sheep, pigs, horses (not attached to vehicles or estate or farm implements) and working dogs

- (i) while on any public road excluding conveyance by motor vehicle? (i)
If so, state
 - (a) maximum value of stock on the road at any one time (not being conveyed by motor vehicle) (a)
 - (b) total value of Proposer's live stock (b)
- (ii) while being conveyed by any motor vehicle on any public road including loading and unloading? (ii)
If so, state maximum value of any one load conveyed by motor vehicle

This question deals with the droving risk and also with the transport of animals by motor vehicle.

8. Schedule.

Name and Situation of Estate or Farm	Description of Estate or Farm (Particulars to be given on a separate sheet if enough space is not provided)		
	Approximate Acreage	Approximate number of Houses, Farms, Cottages, and other Buildings	Average number of animals owned or controlled by Proposer
	Wooded	Arable	Pasture
			Horses _____
			Cattle _____
			Sheep _____
			Pigs _____

The information given in this schedule is required for premium computation purposes, and for identification in the policy.

- 9. Milk Supplied.** Is it desired to cover claims on account of illness due or alleged to be due to foreign or deleterious matter contained in milk supplied? If so, state estimated annual output of milk Estimated output of milk per annum gallons

This enquiry is included mainly because of the case *Square v. Model Farm Dairies (Bournemouth) Ltd.* (1939), 1 All E.R. 259 (see p. 136). An extra premium is payable according to the annual output.

POLICY FORM

The operative clause follows the normal lines and provides that:

"the Company will indemnify the Insured in respect of accidents happening in connection with the Business on or about the Estate or Farm against liability at law for damages in respect of . . ."

Exceptions. The exceptions follow those of the public liability (general) policy but one particular exception is found, which naturally is modified where the risk is eligible on payment of extra premium—

claims arising out of crop-spraying or the action of any commodity used or applied or administered by the Insured or by any employee or agent of the Insured or sold or supplied by the Insured for use consumption or application.

Schedule. This does not need comment.

Crop-spraying

The method of spraying must be ascertained, e.g., high or low pressure spraying by means of a pump geared to a tractor, hand-operated sprayers, or spraying from the air by helicopter or other slow-travelling aircraft.

The type of spray used is material because some chemicals, such as D.N.C., Parathion and Arsenic, are extremely poisonous to human beings and also to animals. Closely connected with the kind of spray used is the purpose of the spraying, e.g., insecticide spraying, weed control, fungicide spraying, and the application of lime and other fertilisers, possibly from the air, to rectify soil deficiencies.

Apart from the possibility of using the wrong type of spray, the general precautions must be examined so as to avoid damage by drift to the property of neighbours. Crops may be sprayed at the wrong stage of growth, or in unsuitable conditions. Peas, for instance, may be damaged if the temperature is too high because the weed killer may then penetrate the wax covering the foliage.

Spraying contractors need insurance, but where farmers own their own equipment it is usual to exclude the use of plant on hire to other farmers. There is as a rule a substantial excess or possibly a percentage excess.

Premiums are usually calculated according to (a) acreage to be sprayed, (b) amount of indemnity, (c) type of chemical involved, (d) method of application—by (i) hand (ii) vehicle (iii) aircraft, and (e) type and ownership of adjacent crops and/or animals.

HOTEL PROPRIETORS' INDEMNITIES

If an hotel proprietor keeps an establishment which is an "hotel" within the meaning of Sect. 1(3) of the Hotel Proprietors Act, 1956, he has special liabilities as explained on p. 36. Although there is now no strict liability for any vehicle or any property left therein, there may be liability on grounds of negligence in the usual way. The statutory limits are £50 any one article and £100 any one guest, but the proposer may require higher sums insured to take care of valuables expressly deposited for safe custody.

Some insurers offer a special policy while others issue a third party (general) indemnity, and extend the policy by endorsement according to the cover required and premium paid. The following is a typical endorsement wording:

MEMORANDUM.—This Policy is extended subject otherwise to its Terms Exceptions and Conditions to provide an indemnity in respect of accidents resulting in:

Section 1 Fire and Explosion—bodily injury risk

death or bodily injury as within described caused by fire or explosion (other than the explosion of steam boilers or other vessels or apparatus under steam pressure).

Section 2 Fire and Explosion—spreading fire risk

damage to property as within described caused by fire or explosion (other than the explosion of steam boilers or other vessels or apparatus under steam pressure).

Section 3 Food risks

death bodily injury or illness due or alleged to be due to food and drink or anything contained or alleged to be contained in food and drink supplied by the Insured.

Section 4 (a) Loss of or damage to effects

loss of or damage to property (other than horses and vehicles unless specifically mentioned) belonging to the Insured's guests and customers;

(b) Loss of or damage to horses and vehicles

loss of or damage to horses and vehicles (including motor vehicles and their contents) belonging to the Insured's guests and customers and while stabled garaged or parked in on or about the Premises.

The Company will in addition pay costs and expenses as within defined

Provided always that

- (1) the Company shall not be liable under Sections 2 or 4 for any loss or damage which is insurable under a Fire Insurance policy
- (2) it shall be a condition precedent to any liability on the part of the Company that the Insured shall
 - (i) take all reasonable precautions to prevent loss of or damage to any property horses and vehicles belonging to the Insured's guests or customers
 - (ii) if the Insured be an Hotel Proprietor post and keep posted a copy of the Notice set out in the Schedule to the Hotel Proprietors Act, 1956, in that part of the Premises prescribed by the Act

- (iii) forthwith deposit any valuable property entrusted to the Insured by guests or customers for safe custody in a safe or strongroom approved by the Company
 - (iv) give a receipt to each person depositing such property with the Insured which receipt shall be taken by the Insured in exchange for such property when it is returned to the depositor
- (3) the liability of the Company under Sections 3 and 4 of this Endorsement shall not exceed the respective sums mentioned hereunder.

Section 3 £	in any Period of Insurance
Section 4(a) £ £	for the property of any one guest in any Period of Insurance
Section 4(b) £ £	for any one horse or vehicle in any Period of Insurance

PEDAL CYCLE INSURANCE

A comprehensive policy is available to provide the cover shown below, or third party only or fire and/or theft only risks can be insured.

PROPOSAL FORM

The special questions are self-explanatory, and they are:

1. **The Cycle.** Details of Cycle:

(a) Type (b) Maker's Name (c) Maker's Number	(a) (b) (c)
--	-------------------
2. **Make and Value.** Year of Make and Estimated Value (including Accessories) 19_____ £ : : .
3. **Scope of Cover.** What Insurance is required?
Please strike out type of cover not required.

(a) Liability to the Public. (b) Loss of Cycle by Fire or Theft. (c) Accidental Damage to the Cycle (subject to the Proposer bearing the first 10s. of each and every claim).

4. **Use.** Will the Cycle be used other than for social domestic and pleasure purposes? If so, give address from which it will be so used

POLICY FORM

Section I—Liability to Third Parties

(1) The Company will indemnify the Insured in the event of accident caused by or through or in connection with an pedal cycle (which expression shall include a pedal cycle carrier owned by the Insured or for which the Insured is responsible or in connection with the loading or unloading of such cycle against liability at law for damages in respect of

Death of or bodily injury to any person

Damage to property

(2) In the terms of and subject to the limitations of and for the purposes of this Section the Company will treat as though he were the Insured any person who is riding such cycle on the Insured's order or with his permission provided that

- (a) such person is not entitled to indemnity under any other policy;
- (b) such person shall as though he were the Insured observe fulfil and be subject to the Terms Exceptions and Conditions of this Policy in so far as they can apply. . . .

In the event of any accident involving indemnity to more than one person any limitation by the Terms of this Policy or of any Endorsement thereon of the amount of any indemnity shall apply to the aggregate amount of indemnity to all persons indemnified and such indemnity shall apply in priority to the Insured.

Exceptions to Section I

The Company shall not be liable in respect of

- (a) Death injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with
 - (i) the bringing of the load to such cycle for loading thereon or
 - (ii) the taking away of the load from such cycle after unloading therefrom
 by any person other than the rider of such cycle
- (b) Death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment
- (c) Death of or bodily injury to any person upon or mounting or dismounting from such cycle with the consent of the Insured or of any servant of the Insured

- (d) Damage to property belonging to the Insured or held in trust by or in the custody or control of the Insured or being conveyed by such cycle
- (e) Any liability which attaches by virtue of an agreement but which would not have attached in the absence of such agreement.

The wording follows the general lines of a motor vehicle policy. A personal indemnity is provided for any person who is riding the cycle on the insured's order or with his permission, subject to the usual terms.

Since insurance is not compulsory, the indemnity for any one accident can be subject to a limit, and that is the reason for the clause, namely, to make clear the position where an accident involves indemnity to more than one person.

Section II—Accidental Damage

The Company will indemnify the Insured against accidental damage to any pedal cycle described in the Schedule (including tyres and accessories when damaged as the result of an accident to such pedal cycle).

The Company may at its option repair reinstate or replace any property damaged or may pay in cash the amount of the damage.

The liability of the Company under this Section in respect of any claim for damage to any cycle (including tyres and accessories) shall not exceed the Estimated Value.

Exceptions to Section II

The Company shall not be liable to pay

- (i) for damage by fire or theft or depreciation wear and tear or breakdown
- (ii) the first ten shillings of any amount which but for this Exception would have been payable in respect of any claim under this Section.

This section is subject to a compulsory excess of 10s., in view of the comparatively small premium charged.

Section III—Fire or Theft

The Company will indemnify the Insured against loss by Fire or Theft of or damage by Fire or Theft to any pedal cycle described in the Schedule (including tyres and accessories thereon if the cycle is damaged or stolen at the same time).

The Company may at its option repair reinstate or replace any property lost or damaged or may pay in cash the amount of the loss or damage.

The liability of the Company under this Section in respect of any claim for loss of or damage to any cycle (including tyres and accessories) shall not exceed the Estimated Value.

General Exceptions

The Company shall not be liable under this Policy for

- (a) Any accident injury loss damage or liability caused by or through or in connection with any pedal cycle while such pedal cycle is being used
 - (i) otherwise than for the purposes of the Business or for social domestic or pleasure purposes
 - (ii) for hire or reward
- (b) Any accident injury loss damage or liability arising outside Great Britain, Ireland, Northern Ireland, the Channel Islands or the Isle of Man
- (c) Any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power
- (d) Any accident loss or damage (except under Section I) arising during (unless it be proved by the Insured that the accident loss or damage was not occasioned thereby) or in consequence of earthquake riot or civil commotion.

SCHEDULE

The Insured

The Business

Limit of Indemnity

Period of Insurance

(a) From
to

or

(b) Any subsequent period for which the Company may accept payment for the renewal of this Policy

Premium £	Renewal Premium £
Subject to adjustment in terms of Condition 5	Subject to adjustment in terms of Condition 5

Estimated maximum number of riders employed in riding at any one time (*including the Insured if he rides*)

Description of pedal cycle	Date of Make	No.	Estimated Value
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Conditions

The conditions call for no comment; they follow the usual lines. The one which deals with precautions is worded as follows:

The Insured shall at all times by personal or other competent supervision take all proper precautions to employ only competent riders and to ensure that the cycles are kept in a proper state of repair.

Where the use is limited to social, domestic and pleasure purposes, the wording of the policy is usually amended, where necessary, by deleting the words and phrases which are inapplicable.

PERSONAL LIABILITY INSURANCE

This type of indemnity was devised in order to provide protection for public liability claims made against a person in his capacity as a private individual arising out of accidents not connected with vehicles, animals (except horses, domestic dogs and cats), any trade or business, or the ownership or occupation of land or buildings. Pedestrians may injure fellow pedestrians or may be the cause of a road accident, while sports can involve players in liability for accidents to others caused by negligence. Not many people hold policies of this kind because they do not realise their need of the protection thereby afforded, although cases such as *Eames v. Capps* (1948) and *Challen v. Bell* (1954) are naturally used by insurers to show that the risk is in these days by no means remote.

The early policies usually excluded liability for pedal cycling and horse-riding accidents, unless extra premium was paid; the normal indemnity was £5,000 any one accident; and the members of the family to be indemnified were limited to six. Many policies, too, excluded "vehicles" and thus did not cover the liability of the insured for negligence when travelling as a passenger in a motor vehicle.

To-day, however, for a premium of 10s. it is usual to provide an indemnity of £25,000 in respect of any one accident, and this applies to the head of the house (in whose name the policy is effected) and all the members of his family. A child in possession of a dangerous toy, such as an air gun, may involve a parent in liability for bodily injury to, or damage to the property of, members of the public. Liability for accidents in which horses, domestic dogs or cats are involved is covered, but if there are other animals the proposal must be considered specially. The indemnity also extends to liability for accidents caused when

travelling as a passenger in a motor vehicle, provided the vehicle is not in the ownership, possession or custody of the insured.

PROPOSAL FORM

The proposal form is a short document, which, apart from the questions common to all forms, may contain the following question, which is self-explanatory.

Exceptional Risk. Are there any circumstances involving an exceptional risk of accidents to members of the public?

POLICY FORM

Now this Policy witnesseth that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon the Company will indemnify the Insured as a private individual against liability at law for damages in respect of accidents resulting in

- (i) death of or bodily injury (including illness) to any person not being a member of the Insured's family or household nor a person who at the time of the accident is engaged in and upon the service of the Insured under a contract of service or apprenticeship
- (ii) damage to property not belonging to nor held in trust by nor in the custody or control of the Insured or a member of the Insured's family or household or a person acting on behalf of the Insured

and caused by the Insured or any person being a member of the Insured's family or household or a person in the service of the Insured. . . .

The Company will in the terms of and subject to the limitations of this Policy also indemnify any member of the Insured's family permanently residing with the Insured provided that such person shall as though such person were the Insured observe fulfil and be subject to the Terms Exceptions and Conditions so far as they can apply.

Exceptions

The Company shall not be liable in respect of

- (i) accidents caused directly or indirectly by traceable to or arising out of the Insured's profession trade or business or ownership possession or the custody by or on behalf of the Insured of land buildings animals (other than horses and domestic dogs and cats) horsedrawn or mechanically-propelled vehicles aircraft ships boats or craft of any kind

- (2) accidents occurring outside Great Britain Ireland Northern Ireland the Channel Islands or the Isle of Man
- (3) liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement
- (4) any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power.

The terms of policies vary to some extent and one insurer expresses one section of the exceptions as follows

Death bodily injury or damage to property caused by or arising out of the ownership	}	of any	{	mechanically - propelled vehicle which is required to be licensed for road use
possession				
use other than as a passenger				

horse-drawn vehicle	}	aircraft sailing or mechanically-propelled vessel other than models

PETROL PUMP INSTALLATIONS

The storage of so dangerous a substance as petrol, even in tanks of approved design with air vents, involves a substantial third party risk, for which a special form of policy has been devised.

PROPOSAL FORM

1. Description and Value. Description and value of the installation.

This information is necessary for policy preparation, and, if the risk of damage to the petrol pumps is to be insured, the extra premium is dependent on the value of the apparatus.

2. Situation. Are the pumps within the proposer's premises or at the kerbside?

The situation of the pumps has a bearing on the third party risk.

State cover required, i.e., whether:

- (a) complete installation, or
- (b) above-ground installation only.

A higher premium is charged if the complete installation is to be insured. This is desirable for full protection, particularly bearing in mind the fire risk.

3. Scope of Cover. Do you wish to insure for:

- (i) comprehensive benefits
 - (ii) public liability only
 - (iii) accidental damage only
- (please delete where not required)

The cover afforded under each section is given in the policy form described below. Comprehensive cover for the complete installation is the ideal.

POLICY FORM**Section I—Liability to the Public**

“... will indemnify the Insured in respect of accidents caused by or in connection with the Petrol Pumps against liability at law for damages in respect of . . .”

The cover is on generous lines including fire and explosion liability up to the limit of indemnity for any one accident stated in the schedule.

Section II—Damage to Pumps

The Company will indemnify the Insured against loss of or damage to any of the Petrol Pumps which shall include the pump casing the illuminating lamp the piping the underground storage tank and all connections.

In the event of damage to which this Section applies the Company may at its option repair reinstate or replace the Petrol Pump or any part thereof or pay the amount of the damage provided that the liability of the Company under this Section for any one Petrol Pump shall not exceed in the aggregate in any Period of Insurance the Sum Insured in respect of such Petrol Pump.

General Exceptions

The Company shall not be liable in respect of

- (a) repairs necessitated by ordinary wear and tear depreciation mechanical or electrical breakdown failures or breakages
- (b) loss of use.

SCHOLARS

Wide protection is afforded by the normal policy and it provides an indemnity to the school management in respect of accidental bodily injury to any scholar attending any school mentioned in the policy, caused by defects in the premises (in-

cluding playgrounds) or their furnishings, or occasioned by negligence on the part of the insured or his employees. Provision is made for the adjustment of the premium at the end of each period of insurance on the number of scholars concerned, and there is therefore no occasion for alterations in the numbers of scholars who attend to be advised during the period of insurance.

Very few scholars' policies are issued because a third party (general) indemnity is preferable owing to the wider cover afforded.

Extensions

Extensions are frequently arranged in respect of the following:

Sports and Outings

Schools consider organised games to be an essential part of the school curriculum and liability for accidents happening on a sports ground attached to the school premises falls within the scope of the ordinary policy.

Accidents on grounds off the school premises or on grounds not belonging to the insured where "away" games may be played, however, necessitate an extension of the indemnity. This also arises with (1) the use of school rifle ranges and Combined Cadet Forces and (2) organised outings for scholars to places of amusement or of local or historical interest. The additional premium for such an extension varies with the frequency of the outings, their objects, and their duration.

Transit Risks

Education authorities sometimes provide facilities for the conveyance of children to or from school, while other scholars may be conveyed to and from distant sports grounds. When motor vehicles are used for this purpose, the persons responsible for the arrangements should satisfy themselves that the vehicle owners are insured in compliance with the terms of the Road Traffic Acts, so far as regards accidents to passengers carried for hire or reward. The best method of protecting the interest of the school management is by endorsement of the carrier's policy, but if this is not practicable the insurers with whom the scholars' policy is placed will often be prepared to extend their policy, on payment of further premium, and subject to their being satisfied that the requirements of the Road Traffic Acts have been complied with by the carriers.

Food Risks

Boarding schools are concerned with claims arising out of unwholesome food or drink supplied to scholars and even day schools provide milk and luncheon facilities. Enquiries similar to those suggested for hotel and restaurant risks (p. 122) should be made.

First Aid Expenses

Insurers are sometimes requested to make provision for medical expenses incurred as the result of accidents occurring to scholars upon school premises. The ordinary policy is limited in its scope to an indemnity in respect of the insured's legal liability to pay compensation on account of bodily injuries sustained by scholars, as stated in the policy. It follows that medical expenses where no legal liability attaches for the accident are not payable. Occasionally, such provision is made at a substantially higher rate per hundred scholars, subject to a limit of liability per scholar, per accident. Such an extension provides for doctors' fees incurred by the school authorities and includes the cost of a conveyance to the child's home.

Basis of Rating

Scholars' indemnities are usually rated upon the number of scholars upon the school registers during the period of insurance. As an alternative, the premium may be calculated upon the maximum number in attendance at any one time. It is usual to charge fixed rates per hundred scholars, the rates varying with the limits of indemnity selected, the class of school, and the subjects included in the curriculum, with or without loadings for food and drink risks and for accidents arising away from the school premises. It may be necessary to stipulate for a minimum premium where the normal rate per hundred scholars does not produce sufficient premium for the risk. There is the usual policy condition regarding adjustments of this premium (see p. 194).

Public authorities, because of the very large number of scholars under their control, obtain preferential rating treatment for these indemnities. Competition has reduced the business from such sources to an unremunerative level, for there are often serious claims.

PROPOSAL FORM

1. **Number of Scholars.** State the number of scholars.
 - (a) Day scholars
 - (b) Boarders.

The answer to this enquiry indicates the differential rates which may have to be charged.

2. Condition of Premises. Are the school premises and playground, to the best of the proposer's knowledge and belief, in a good condition at the present time and will they be so maintained?

The importance of an affirmative answer to this question will be apparent.

3. Defective Scholars. Are any of the scholars mentally deficient, or defective in limb, sight, hearing or otherwise?

This question is applicable only if the school accommodates scholars who are in any particular respect defective. If such scholars are included, a substantially higher premium is required.

POLICY FORM

Operative Clause

Now this Policy witnesseth that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon the Company will indemnify the Insured in respect of accidents caused by the defective condition of the school premises or furnishings or by the Insured or any person in the service of the Insured against liability at law for damages and claimants' costs and expenses in respect of death of or bodily injury to any Scholar at any School mentioned in the Schedule.

It will be observed that the indemnity provided is limited to accidents causing bodily injury and does not include property damage. Accidental bodily injury occasioned by fire or explosion is not usually excluded. Otherwise, the exclusions generally follow those of the third party (general) policy.

If steam generating boilers or lifts are used, separate insurances in appropriate form should be effected. An endorsement may also be necessary if food risks are to be included.

Conditions

1. Maintenance of Premises in Good Repair

The Insured shall at all times see that all Schools are kept in good repair; and if any defect be discovered, by complaints from scholars or otherwise, shall forthwith cause such temporary precautions to be taken as the circumstances may require. The Insured shall, for the purpose of carrying out any work of

repair, decoration or alteration in the Schools, employ only contractors of recognised standing and repute for the class of work entrusted to them, and shall, during the progress of such work, take all reasonable steps that are practicable to minimise the risk of accident.

2. Adjustment of Premium

If the Premium or Renewal Premium has been calculated on estimates furnished by the Insured the Insured shall keep an accurate record containing all particulars relative thereto and shall at all times allow the Company to inspect such record. The Insured shall within one month from the expiry of each Period of Insurance furnish to the Company such particulars and information as the Company may require. The premium for such period shall thereupon be adjusted and the difference paid by or allowed to the Insured as the case may be.

These conditions do not call for comment.

SPORTSMEN'S INDEMNITIES

Insurers offer third party indemnities for all kinds of sports. Indemnities can be arranged for individuals and also for clubs. The policy is then usually issued in the name of the club committee and protects them in respect of claims brought against them as a body by members or non-members. A personal indemnity can also be provided for members, either including or excluding "member-to-member" liability. There may be a club house where food and drink are supplied and an appropriate policy extension to provide for this should be arranged. As a rule, premiums are based on membership.

Below some of the main kinds of policies issued to individuals are summarised.

(a) ANGLERS

Policies are issued to cover (i) public liability up to £25,000 any one accident, excluding liability for accidents connected with the possession or use of any craft (other than hand-propelled craft) or of any vehicle, (ii) limited personal accident benefits (see below), (iii) breakage of rods while angling, and (iv) fire, burglary and theft cover for the insured's rods, reels, and other angling tackle and wearing apparel, up to £50 in all. The insurance applies anywhere in Great Britain, Ireland, Northern Ireland, the Channel Islands or the Isle of Man and within the territorial waters thereof, but does not apply to tunny or shark fishing, fishing for profit, or sea fishing off the West

Coast of Ireland or Northern Ireland. A nominal premium of 10s. is usually charged.

PROPOSAL FORM

A short form of proposal is used, and the only special question is designed to ascertain whether the proposer already holds a personal accident policy with the insurers.

POLICY FORM

Operative Clause

Section I—Public Liability

This section relates to:

"... accidents caused by the Insured while Angling anywhere in Great Britain, Ireland, Northern Ireland, the Channel Islands, or the Isle of Man and within the territorial waters thereof. . . ."

Section II—Personal Accident

If the Insured shall suffer bodily injury resulting solely and directly from accident caused by outward violent and visible means while Angling within the territorial limits as defined in Section I and such bodily injury shall directly and independently of any other cause result in the Insured's Death or Disablement as described below the Company shall pay compensation to the Insured or to the Insured's personal representatives.

	Compensation
(1) Death	1 £1,000
(2) The total and irrecoverable loss of sight of one or both eyes or the loss by amputation of one or more entire hands or entire feet.	2 £1,000
(3) Temporary total disablement from engaging in or attending to usual business	At the rate of £6 per week for a period not exceeding in all fifty-two weeks from the happening of the accident

Compensation shall not be payable

- (i) if at the time of the accident the Insured has attained the age of 70;
- (ii) if the Death or Disablement be due directly or indirectly to self-injury, suicide or intoxicating liquor;
- (iii) under more than one of Headings (1), (2) or (3) in respect of any one accident;

- (iv) unless immediate notice of the Insured's Death or Disablement shall have been given to the Company nor unless the Company's medical, surgical or other agent is permitted to see and examine the nature of the injury and in the case of Death to make a post-mortem examination of the body, nor unless such information and medical and other evidence as the Company may reasonably require in connection with any claim is furnished on request free of expense to the Company.

Section III—Breakage of Rods

Breakage of Rods belonging to the Insured while the Insured is actually engaged in Angling within the territorial limits as defined in Section I.

Section IV—Fire and Theft

Loss of or damage to Rods, Reels and other Angling Tackle or Apparel caused by Fire, Burglary, Housebreaking, Larceny or Theft within the territorial limits as defined in Section I up to but not exceeding the Sum Insured.

Provided always that on the happening of any loss or damage insured under Sections III or IV the Company shall be entitled to take and keep possession of the property concerned and to deal with the salvage in a reasonable manner and this Policy shall be proof of leave and licence for such purpose. No property may be abandoned to the Company.

Exceptions

The Company shall not be liable in respect of

- (1) accidents caused directly or indirectly by or traceable to the ownership, possession or use of vehicles or craft other than hand-propelled craft;
- (2) accident, loss, damage or liability occasioned during or in consequence of fishing for tunny or shark or for profit or off the West Coast of Ireland or Northern Ireland;
- (3) war risks (in the usual terms).

(b) GOLFERS

The main risk connected with golf is that of accidents to passers-by on adjoining highways or on paths across the course. It is not sufficient to shout "Fore" and then drive. A number of serious accidents have been caused to pedestrians and to those using motor vehicles, in fact, one of the early cases to draw attention to the desirability of golfers' indemnities was *Castle v. St. Augustine's Links* (1922), 38 T.L.R. in which a golf ball

hit the windscreen of a taxi and caused the driver to lose the sight of an eye.

When the golfers' policy was devised at a low premium of 10s., the policy was regarded as an advertisement, in the hope that it would attract other types of business to the company.

The policy cover is on somewhat similar lines to that of the anglers' policy, but the fire, burglary and theft section is normally limited to property in any club house, caddie master's hut or professional's shop on courses within the territorial limits of the policy. For additional premium the section can be extended to apply to golf clubs and golf apparel at any hotel or private residence, including transit risks. The sum insured can be increased, if desired.

PROPOSAL FORM

This form is similar to that for anglers but the proposer is asked whether he requires the extension(s) mentioned in the preceding paragraph.

POLICY FORM

Section I—Public Liability

The indemnity relates to:

"accidents caused by the Insured while on any recognised Golf Course in Great Britain, Ireland, Northern Ireland, the Channel Islands or the Isle of Man for the purpose of playing Golf."

Section II—Personal Accident

This section of the policy is similar to the corresponding sections of the policies available for anglers and for sporting guns (see pp. 195 and 200).

Although the cover provided is valuable, the restrictions should be noted, and, in particular, that the benefits are payable only in the event of an accident which may occur during participation in the sport concerned.

It follows that a separate annual personal accident policy is still required to provide protection against accidents which may be suffered in almost all circumstances. If, say, a golfing accident occurred with disability as contemplated by the policies then the claims would be payable in full under the special contract (e.g., the golfers' policy) and also under the separate personal accident policy. To be on the safe side the insurers should be made aware of the existence of the latter.

Section III—Breakage of Clubs

Breakage of Golf Clubs belonging to the Insured while the Insured is actually in course of play therewith on any Golf Course as defined in Section I.

Section IV—Fire and Theft

Loss of or damage to the Personal Effects of the Insured (excluding watches, jewellery, trinkets, money, securities or stamps) caused by Fire, Burglary, Housebreaking, Larceny or Theft while such effects are in any Golf Club House, Caddie Master's Hut or Professional's Shop on any Golf Course as defined in Section I up to but not exceeding the Sum Insured.

Provided always that on the happening of any loss or damage insured under Sections III or IV the Company shall be entitled to take and keep possession of the property concerned and to deal with the salvage in a reasonable manner and this Policy shall be proof of leave and licence for such purpose. No property may be abandoned to the Company.

(c) SPORTING GUNS

Sportsmen who indulge in shooting often seek third party insurance for accidents arising out of the use of their gun(s). In addition, the gun(s) may be insured against loss or damage on "all risks" lines, and some insurers also offer optional personal accident insurance.

Fixed premiums per gun are charged for third party insurance; for the "all risks" cover on the guns themselves the premium is approximately 15s. per cent., with a reduction where more than one gun is insured; and a fixed premium is charged for the personal accident section.

PROPOSAL FORM

Schedule

GUNS TO BE INSURED

Name of Maker	Number on Gun	Date of Make	Value
.....
.....
.....

What Insurance is required? ...
Please strike out type of cover
not required.

- (a) Loss of or Accidental Damage to the Guns.
- (b) Liability to the Public.
- (c) Personal Accident.

This information is required for rating, and in order that the policy may be correctly prepared.

The declaration is on normal lines but includes a warranty "that I am in good health and have no physical infirmity".

POLICY FORM

Section I—Loss of or Damage to Guns

The Company will indemnify the Insured against loss of or damage to any of the Guns as the result of:

- (1) fire;
- (2) burglary, housebreaking, larceny or theft;
- (3) any accident or misfortune not hereunder excluded.

Provided always that the amount of such loss or damage shall not exceed in all the Sum Insured in respect of each of the Guns. The Company may at its option repair, reinstate or replace such gun or any part thereof or may pay in cash the amount of the loss or damage.

Section II—Public Liability

The Company will indemnify the Insured in respect of accidents happening in connection with the use by the Insured in person of any sporting gun against liability at law for damages in respect of:

- (1) death of or bodily injury (including illness) to any person not being a member of the Insured's family or household nor a person who at the time of the accident is engaged in and upon the service of the Insured under a contract of service or apprenticeship;
- (2) damage to property not belonging to nor held in trust by nor in the custody or control of the Insured or a member of the Insured's family or household or a person acting on behalf of the Insured.

The liability of the Company in respect of or arising out of one occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause shall not exceed the Limit of Indemnity.

In respect of a claim for damages to which the indemnity expressed in this Policy applies the Company will also pay:

- (a) all costs and expenses recovered by any claimant from the Insured and
- (b) all costs and expenses incurred with the written consent of the Company.

In the event of the death of the Insured the Company will in respect of the liability incurred by the Insured indemnify the Insured's personal representatives in the terms of and subject to the limitations of this Policy provided that such personal representatives shall as though they were the Insured observe fulfil and be subject to the Terms, Exceptions and Conditions so far as they can apply.

Section III—Personal Accident

If the Insured shall suffer bodily injury resulting solely and directly from accident caused by outward violent and visible means in direct connection with the discharge of any sporting gun and such bodily injury shall directly and independently of any other cause result in the Insured's Death or Disablement as described below the Company shall pay Compensation to the Insured or to the Insured's personal representatives.

	<i>Compensation</i>
(1) Death	1 £1,000
(2) The total and irrecoverable loss of sight of one or both eyes or the loss by amputation of one or more entire hands or entire feet.	2 £1,000
(3) Temporary total disablement from engaging in or attending to usual business	At the rate of £6 per week for a period not exceeding in all fifty-two weeks from the happening of the accident

Compensation shall not be payable

- (i) if at the time of the accident the Insured has attained the age of 70;
- (ii) if the Death or Disablement be due directly or indirectly to self-injury, suicide or intoxicating liquor;
- (iii) under more than one of Headings (1), (2) or (3) in respect of any one accident;
- (iv) unless immediate notice of the Insured's Death or Disablement shall have been given to the Company nor unless the Company's medical, surgical or other agent is permitted to see and examine the nature of the in-

jury nor unless such information and medical and other evidence as the Company may reasonably require in connection with any claim is furnished on request free of expense to the Company.

Exceptions—Applicable to all Sections

The Company shall not be liable in respect of:

- (1) loss of or damage to Guns caused directly or indirectly by or traceable to any process of cleaning or by wear and tear;
- (2) accident, loss or damage occurring outside Great Britain, Ireland, Northern Ireland, the Channel Islands or the Isle of Man.
(Also contractual liability and war risks in the usual terms.)

(d) SPORTS GENERALLY

Some insurers offer a policy to cover (i) third party liability, (ii) personal accident, (iii) breakage of personal equipment and (iv) fire and theft risks in relation to any types of sport as below with a reduction of 10 per cent. on the premiums shown for two or more sports:

Angling, Basket Ball, Badminton, Bowls, Fencing, Fives, Golf, Hockey, Netball, Racquets, Swimming, Tennis 10s. per sport.
Athletics on Foot, Cricket, Hacking, Ice Skating and
Roller Skating 15s. per sport.

TELEVISION INSTALLATIONS, RADIO RECEIVERS AND RADIO GRAMOPHONES

Not many people seek insurance for radio sets, as such, because the main risk—third party liability—is within the scope of the normal householder's comprehensive policy, and this is deemed to be sufficient. Television insurance, however, is different, in the sense that the sets are usually more expensive than radio sets, and certain of the risks are greater.

The scope of the cover varies with different insurers. Particulars of one plan are given below, which relates to sets while at the owner's private house or while temporarily at any other

private residence in Great Britain, Ireland, Northern Ireland, the Channel Islands or the Isle of Man.

Scheme 1. Damage and Public Liability: Television Installations, Radio Receivers and Radio Gramophones. The installation is insured against loss or damage by fire, lightning, explosion, storm, tempest, theft or accidental external means. Liability to the public for bodily injury or damage to property caused by the installation, including the aerial, is covered up to £25,000 any one accident. Indemnity up to £500 is also provided for damage to property of the insured or for which he is responsible as tenant caused by breakage or collapse of aerials, aerial fittings or masts.

Scheme 2. Breakdown: Television Sets. The cover under Scheme 1 is given and, in addition, breakdown of the cathode ray tube forming part of the set.

Scheme 3. Wider Breakdown Cover: Television Sets. Under this Scheme, too, the cover under Scheme 1 is afforded, and also breakdown of the cathode ray tube, valves or any other components of the installation.

Scheme 4. Breakdown of Radio Receivers and Radio Gramophones. Scheme 1 cover is provided and also breakdown of valves or any other components of the installation.

N.B.—Schemes 2, 3 and 4 apply to new sets of proprietary make only, not more than six months old. Breakdown means complete failure to function, and the retail cost price of the part which breaks down is paid in full. Reasonable fitting charges in connection with the breakdown are payable, namely, the cost of removing the defective component and fitting a new one.

Under Schemes 1 and 4 the premium is computed at a rate per cent. on the full value of the installation. For Schemes 2 and 3 the premium depends on the size of the direct viewing cathode ray tube, the projection tubes, and to a minor extent the value.

PROPOSAL FORM

1. ADDRESS.	(a) Address where the Installation is situated .. .	(a)
	(b) Is it solely a private residence ? .. .	(b)
	(c) If not, what business is conducted in the premises ? .. .	(c)
2. USE.	Is the Installation used solely for private purposes ? If not, give particulars
3. PRICE.	Was the set purchased at full retail price ?
4. MAINTENANCE.	Is there a Maintenance Agreement in force with any dealer relating to the set ?
5. ORDER AND CONDITION.	Is the Installation in good working order and condition ?
6. BREAKDOWN.	Has it at any time broken down, necessitating the replacement of any part ? If so, give details	
7. SCOPE OF COVER.	Which Scheme do you require—"1," "2," "3," or "4" ?

SCHEDULE.**THE INSTALLATION**

Make and Description	Tube Size	Purchase Date	Cost Price		
			Set	Accessories	Aerial
Television			£	£	£
Radio	—		£	£	£

POLICY FORM

The corresponding policy form for television installations only is dealt with below.

Operative Clause

The Company agrees subject to the terms exclusions limits and conditions contained herein or endorsed hereon that in the event of injury damage destruction or loss occurring within the Situation and happening during the Period of Indemnity the Company will indemnify the Insured as follows

Section I—Loss of or Damage to the Installation

The Company will indemnify the Insured as follows

- A. by payment or at its option by reinstatement or repair against loss or destruction of or damage to the Installation or any part thereof by Fire Lightning Explosion Storm Tempest Theft or Accidental External Means
- B. (i) by payment of the retail replacement cost of any Cathode Ray Tube Valve or other component of the Installation that may break down
- (ii) by payment of the reasonable fitting charges necessarily and directly incurred by the Insured in removing the defective Tube Valve or component and fitting a new Tube Valve or component

Definition—Breakdown shall mean the actual breaking or burning out of any part of the Installation whilst in use arising from either mechanical or electrical defects in the Installation causing sudden stoppage of the functions thereof and necessitating repair or replacement before the Installation can resume normal working

Provided that the liability of the Company under this Section during any one Period of Indemnity shall not exceed

- (a) in respect of any one item of the Installation the Sum Insured set opposite thereto
- (b) in respect of all damage destruction or loss the Total Sum Insured on the Installation

Exclusions to Section I

- The Company shall not be liable under this Section for
- 1. loss or damage caused by atmospheric or climatic conditions other than lightning storm or tempest
 - 2. loss of or damage to any cathode ray tube or valve arising whilst such tube or valve is not a component of the Installation
 - 3. loss of or damage to the receiver or to any tube valve or other component of the Installation due to the use of such receiver tube valve or other component contrary to the maker's directions or resulting from any alteration or modification of the receiver tube valve or other component or of the circuit not approved by the makers
 - 4. loss or damage arising during the fitting adjustment repair or dismantling of any part of the Installation
 - 5. the cost of re-erecting or re-aligning aerials or aerial fittings which have been displaced by Storm or Tempest but which have not been damaged
 - 6. loss or damage recoverable under the maker's guarantee or which would have been recoverable had such guarantee been in force

Section II—Damage by Breakage or Collapse of Aerials

The Company will by payment or at its option by reinstatement or repair indemnify the Insured in respect of damage to other property of the Insured or for which the Insured is responsible as tenant within the Situation caused by breakage or collapse of the aerials aerial fittings or masts forming part of the Installation

Provided that the liability of the Company under this Section for all damage during any one Period of Indemnity shall not

exceed the sum stated in the Schedule as the Limit of Indemnity for Section II

Exclusions to Section II

The Company shall not be liable under this Section for

1. damage arising from wear and tear or gradual deterioration or caused by atmospheric or climatic conditions other than lightning storm or tempest
2. damage arising during the fitting adjustment repair or dismantling of any part of the aerials aerial fittings or masts

Section III—Liability to the Public

The Company will indemnify the Insured against liability arising from accidents as follows

- A. all sums which the Insured shall become legally liable to pay for compensation in respect of

(1) accidental bodily injury to any person

(2) accidental damage to property

caused by or through the Installation
 - B. all costs and expenses of litigation recovered by any claimant against the Insured
 - C. all costs and expenses of litigation incurred with the written consent of the Company
- in respect of a claim against the Insured for compensation to which the indemnity expressed in this Section applies

Provided that the liability of the Company under this Section for all compensation payable to any claimant or any number of claimants in respect of or arising out of any one occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause shall not exceed the amount specified in the Schedule as the Limit of Indemnity for Section III.

(There is the usual indemnity to legal personal representatives.)

Exclusions to Section III

The Indemnity expressed in this Section shall not apply to nor include

1. liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement

2. liability in respect of
 - (a) injury to any person under a contract of service or apprenticeship with the Insured if such liability is in respect of injury arising out of and in the course of the employment of such person by the Insured
 - (b) compensation claimed from the Insured by an injured person or defendant under any Workmen's Compensation Act applying to Ireland
3. liability in respect of damage to property belonging to or in the charge or under the control of the Insured or of any servant or agent of the Insured

General Exclusions Applying to All Sections

The indemnity expressed in this Policy shall not apply to nor include any consequence of

1. war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power
2. outside Great Britain—riot or civil commotion

Conditions

Among the usual conditions are the following which are of special interest.

Applying to Sections I and II

1. If any claim shall arise through or be attributable to the act neglect or default of any person or persons other than the Insured or his servants then the Insured shall at the request and cost of the Company institute take and prosecute such proceedings at law or otherwise and render such assistance as may be necessary for the recovery from the person or persons by or to whose act neglect or default the damage may have been sustained or attributable and all money so recovered shall be the property of the Company

2. The Insured shall not incur any expense in making good any damage without the written consent of the Company. The Insured shall not be entitled to abandon any property to the Company

Applying to all Sections

3. The Insured shall keep the Installation in proper working order and repair and shall take all reasonable precautions for the safety of the property insured. The Company shall have at all reasonable times free access to inspect the Installation

4. If any change shall be made in the conditions of risk as existing at the time of acceptance the Company shall not be liable to make any payment under this Policy unless due notice is given to the Company and the assent of the Company signified by endorsement hereon

5. Immediately upon having knowledge of any event giving rise or likely to give rise to a claim under this Policy the Insured shall

(a) in case of theft or loss give immediate notice to the police and take all practicable steps to cause the discovery and punishment of any guilty person and to trace and recover the property

(b) give to the Company notice in writing and within seven days thereafter deliver to the Company a claim in writing and supply all such particulars and proofs as may be reasonably required

In no case shall the Company be liable for any loss or damage not notified to the Company within thirty days after the event

THE SCHEDULE

The Company:

The Insured: Name
Address

Period of Indemnity:

- (a) From the
to 4 o'clock in the afternoon of the
(b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept a renewal premium
-

First Premium	Renewal Premium Due
The Situation:	The Installation:
On the Insured's Premises situate	Set
or temporarily removed to any occupied private dwelling in Great Britain Ireland Northern Ireland the Channel Islands or the Isle of Man	Tube Size
	Accessories
	Aerial
Total Sum Insured on the Installation:	£

Limits of Indemnity: Section II—£500 Section III—£25,000

Date of signature of proposal and declaration:

CHAPTER XIII

PROFESSIONAL INDEMNITIES

(including Liability for Negligent Advice or Treatment)

There is a demand for indemnities in respect of claims made against professional men on account of their personal negligence, that of their partners, or of those employed by them. Policies are issued by some insurers to accountants, architects, chemists and druggists, doctors and dentists, estate agents, insurance brokers, public officials, solicitors, stockbrokers and others who, in the course of their business or profession, may by some neglect, default, or error, cause financial or personal injury to their clients.

The reluctance of many insurers to participate in this class of business is not due to the frequency with which claims are made against professional men, for in this country professional men, as a class, are without rival for efficiency and ability. The diffidence of insurers is rather due to the difficulties of settlement when claims do arise. No professional man can lightly afford to allow his name to appear in an action for negligence, with its consequent publicity. While the insurers, therefore, under competent advice, may be satisfied that a particular claim against a professional man or his firm could not succeed in a Court, the insured will rightly feel that the mere fact of an action having been commenced against him will prejudice him in the eyes of the public, even if he obtains judgment. Thus, the professional man has not that community of interest with the insurers which is essential for the smooth-running of insurance business and insurers may thus experience undesirable friction with the policyholder, unless they accede to his request to settle the claim out of court, which is often expensive.

Some insurers have endeavoured to evade this difficulty by stipulating in their policies that no action shall be contested in a Court unless a Queen's Counsel, mutually agreed by the parties to the insurance contract, advise that a particular claim should be contested, when the insured must not unreasonably withhold his consent to such a course. It is doubtful, however, whether even this procedure fully satisfies the professional man against whom an action is pending, for it is easy to foresee cases which

might arise where two equally competent opinions might clash, so that the insured might be dissatisfied.

No insurers will issue policies of this kind to others than those known to be competent and qualified to carry out the work in respect of which the indemnity is sought. For example, no insurers would consider a proposal for an accountant's indemnity from one who did not hold a recognised diploma.

TYPES OF POLICIES

Accountants

Statements to which the signature of a qualified accountant is appended are relied upon for their accuracy by those reading them, and if, acting upon the information thus vouched for, the persons for whom work has been done are misled so that they incur financial loss or liability, such persons may take proceedings against the accountant for the amount of their loss.

Accountants are engaged, among other things, to prepare companies' balance sheets, upon the results of which a company may determine its dividend disbursements. Accountants may also be required to check books or to prepare statements on the financial standing of a firm, errors in which may involve them in liability to those employing them. Errors and omissions in all such work, involving liability to others, may be the subject of accountants' indemnities. Two types of contract are available. The first provides an indemnity in respect of the insured's legal liability for omission, neglect, error or default which takes place before or after the commencement of the policy, but becomes apparent during its currency; the second provides a similar indemnity in respect of liability thus incurred on account of mistakes which happen during the currency of the insurance (including periods for which the policy may have been renewed) and are discovered within six months from the date of its expiry. From the insurer's point of view the latter is the more attractive because the insurance is brought within more reasonable limits and there is not the same likelihood of a policy having been effected to protect the insured against a liability which he may suspect that he has incurred in the past.

Premiums are calculated partly on the sum insured, on which a percentage rate may be charged, and partly on the number of partners and responsible clerks employed. It is possible for an individual partner to effect a policy to indemnify him alone in respect of liability for his own personal mistakes or those of his personal employees, and also for his own liability for the omission, neglect, error or default of his partners.

Architects

Architects may incur financial liability to others for their mistakes and those of their employees, in consequence of incorrect advice and the improper drawing up of plans, specifications, designs, quantities or tenders, or for negligent supervision of structural and other work. Policies for firms or individuals are provided on somewhat similar lines to those for accountants.

Chemists and Druggists

The main risks of chemists and druggists relate to the possibilities of prescriptions having been made up incorrectly. The qualifications of the proposer and of the persons employed by him for dispensing are of paramount importance. Past history requires investigation although no claims may have been made following mistakes. Certain medicines may be compounded in bulk and, before the error will have been discovered, a large number of persons may have been seriously affected.

Premiums are based partly on the limit of indemnity and partly on the number of qualified dispensers.

Doctors and Dentists

The work of doctors and dentists for the present purpose is similar and, not infrequently, speculative actions may be commenced against such persons by those who allege incorrect diagnosis or that an alternative method of treatment might have secured more satisfactory results than those derived from the treatment given. It is here that the importance of professional qualifications becomes apparent, since there is often no lack of qualified persons ready to give evidence for the plaintiff in an action against an unrecognised defendant practitioner, but professional men may hesitate to give their opinions in favour of such a person.

Most doctors are members of the Medical Defence Union which makes provision for the defence of doctors against whom legal actions are commenced arising out of alleged negligence, or want of reasonable skill. Few proposals, therefore, are made by doctors who can obtain much wider cover in respect of claims for alleged unprofessional conduct from their professional union. If a proposal is received, the insurers will wish to know if the proposer is within the Medical Defence Union scheme, and, if not, why not.

Premiums are usually calculated upon the limit of indemnity selected and the number of qualified persons comprising and employed by the partnership.

Estate Agents

The complexity of the law in general and, in particular, in connection with the sale of property has resulted in more proposals than formerly being received by insurers from estate and property agents. Failure to collect rents when due or failure to obtain their client's consent to a particular action taken in conjunction with the management of an estate may result in a claim for damages. Likewise, failure accurately to describe a property or restrictions attaching thereto in a notice of sale for private sale or auction may involve liability to either the seller or the purchaser, or both.

The professional qualifications and experience of the partners of the firm and their employees, especially the latter when much responsibility is placed in the hands of a managing clerk, require investigation, as well as the general status of the firm and its reputation in the area in which it operates.

Premiums are based on the number of partners and qualified staff and have regard to the limit of indemnity required.

Insurance Brokers

An insurance broker may become liable to indemnify a client who has sustained loss owing to errors or omissions on his part, or those of his partners or employees, and policies are available to cover this risk. There is, however, one special feature. A broker may remove business from an insurer who has issued the insurance broker's indemnity and place it with another insurer on less satisfactory terms as regards insurance protection, whereby the broker may render himself liable to the client for any loss sustained as the result of his action in transferring the business, without the insured's consent, to another insurer. Thus, the insurer might find himself in the anomalous position of having to pay, indirectly, a claim on insurances which, through the agency of the broker indemnified, he had previously lost. Policies usually provide that not only shall a portion of the risk remain the interest of the insured, but that the extent of the insurer's liability shall be settled, either by the amount awarded by a Court, or by an agreed arbitrator.

Premiums are based on the limit of indemnity required and the number of active directors or partners and employees engaged in the business.

Solicitors

Claims are made against solicitors on account of alleged wrongful advice or omission, neglect or error in performing work entrusted to them. There is accordingly a demand for

solicitors' indemnity policies, particularly since the passing of the Law of Property and the Law Reform Acts. Some such policies provide that the insured shall bear a portion of each and every loss, and invariably exclude liability for claims made against the insured for libel, slander, or monetary defalcations of the insured or of his employees. Otherwise, there is little to distinguish such contracts from those issued to accountants and premiums are similarly computed, partly on the number of partners and staff and partly on the limit of indemnity required, on which a percentage rate may be charged.

Stockbrokers

Like other professional men, a stockbroker may be held responsible for his own or his employees' omissions, neglect, errors, or other defaults in his dealings for others. Insurances, however, are afforded only to persons of good repute and who are members of a recognised Stock Exchange.

Premiums are regulated by the number of principals, their employees and the limit of indemnity selected.

Veterinary Surgeons

Veterinary surgeons are liable to have claims made against them by reason of the treatment and prescription for treatment of animals. As usual, the professional qualifications of the proposer and each of his assistants are material.

Claims may occur in circumstances which impute no negligence on the part of the veterinary surgeon or his assistants as, for example, when they use a substance for injections which does not conform entirely to its advertised qualities. In the first instance, the veterinary surgeon may find himself held responsible for the death or injury caused to animals by its use, and he may be put to the expense of defending himself and then recovering from the party from whom he obtained the unsuitable substance.

Premiums are based partly on the limit of indemnity selected and partly on the number of qualified persons involved.

PROPOSAL FORM

The proposal forms used for professional indemnities vary to some extent with the profession of the proposer. They are also dependent, by reason of the information they seek to obtain, upon the terms of the required insurance, in so far as it relates to omission, neglect, or error which may have taken place before the inception of the contract, or otherwise. The following are the usual questions asked, apart from those discussed in Chapter V.

1. Name of Proposer and Professional Qualifications. What are the full names of the proposer? In a partnership, please state fully the names of all the partners and the professional qualifications of each.

Full information on these lines is needed because if the proposal is in the name of a firm the policy will be required to indemnify the partners jointly and severally, that is to say, whether the claim is made against the partnership or against one only of the partners. Sometimes, too, it becomes apparent from the answer to this question that there is a sleeping partner, possibly unqualified, or even an active partner without professional qualifications. If there is an unqualified sleeping partner, the proposal may be dealt with by stipulating that no indemnity shall attach in connection with any action he may take in the management of the business, but no proposal would usually be accepted for an unqualified active partner.*

2. Name or Style of Proposer's Business. Under what name or style is the proposer's business conducted and from what address?

This information is required to supplement that brought out by the first question. The name or style of the business may not always contain the name(s) of any of the present partners. At the same time, the style of the firm may be better known than the names of the partners and may assist if it should be deemed necessary to make local status enquiries.

3. Profession carried on. What profession is carried on by the proposer? Please state fully all classes of business conducted, if more than one.

In country districts especially, it sometimes happens that a firm engaged primarily in one of the lesser professions engages in other kinds of activities as well. It is essential that the insurers be fully informed, lest they should give an indemnity for work of a kind of which they were unaware. One kind of work, although not within the terms of the indemnity, may have its effect, in the minds of the insurers, on the conduct of the other.

* Qualification is often a prerequisite to admission to partnership as, for instance, partnership in a firm of solicitors.

4. Details of Staff. How many persons are in the proposer's employment as:

- (a) Qualified assistants?
- (b) Clerks?
- (c) Typists, office boys, and others?

Such information is needed for the purposes of premium calculation, and these details help to give some idea of the size of the business. They may indicate a prosperous state of affairs, or otherwise.

5. Age and Control of Business. How long has the proposer's business been established and for how long has it been under the control of the present owner or one or more of the present partners?

So much depends upon the status and reputation of the proposer that this information is essential. It is a guide, in so far as a firm which has survived possibly for longer than a century and which has for long been managed by the present partners, gives an impression of stability. A new firm or a firm in which, for no obvious reason, there were constant changes in partners might not appeal in the same way to a prudent insurer.

6. Experience of Partners in Management. How long has each partner practised as a principal?

Here, too, the object is to ensure that the proposer, whether an individual, firm, or partnership, is efficient and experienced. If the principals are all young and have had very little experience, the risk may be unattractive.

7. Previous Errors. Has any claim been made against the proposer or any partner or member of the proposer's staff for neglect, omission or error in relation to his professional duties? If so, please give details including the date and cost of each claim.

Sometimes the following is included:

Has the proposer within the past twelve months discharged, or does the proposer contemplate the discharge of any member of the staff, on account of any omission, neglect, error or the like? If so, please give full details.

It is a truism that the past experience in most classes of accident business is the surest guide to the experience for the future. That is not to say that any claim in the past will necessarily mean that the proposal is not eligible for acceptance, but it does open up lines of enquiry so closely affecting the risk to be run that the details must not be

neglected. Full weight must be given to inferences which can properly be drawn from the circumstances of any such claim.

8. Possible Outstanding Liability. Is the proposer aware of any neglect, omission, or error, or the existence of any circumstances which might give rise to a claim?

Some such question is essential for fear there should be a deliberate selection by the proposer against the insurers. An affirmative answer would warrant the closest investigation and the circumstances of the omission, neglect or error admitted might well tend to the suspicion that there had been others, although that would not necessarily be the impression created. Liability for any known omission, neglect or error, or possible liability for the omission, neglect, or error of the perpetrator might well be excluded, whether or not he were still in the service of the firm.

Declaration

This is in the usual form and in the absence of question 8 in the proposal form would contain a statement to the effect that the proposer had no reason to expect that any claim was likely to be brought against him at the time of signature.

POLICY FORM

Operative Clause

Now this Policy witnesseth that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon the Company will indemnify the Insured against liability at law for damages in respect of any omission, neglect or error occurring or committed or alleged to have occurred or to have been committed during any Period of Insurance by the Insured or by any person in the employment of the Insured acting in good faith in the normal conduct of the Business or Practice notice of a claim in respect of which has been given to the Company during the currency or within six months of the expiry of the Policy.

The Company shall not be liable to pay in any Period of Insurance more than the Limit of Indemnity in addition to costs and expenses incurred by the Insured with the Company's written consent.

The form of wording, adapted where necessary, may be applied to almost all professional indemnities and provides for the application of the indemnity either to the firm as a whole, or to individual partners, against whom claims may be brought.

While costs payable to any claimant are included within the limit of indemnity, costs incurred with the insurer's consent in the defence of the insured are payable in addition to that limit.

Exceptions

The Company shall not be liable for claims made in respect of

- (a) libel or slander;
- (b) loss brought about or contributed to by the dishonesty of the Insured or any person in the employment of the Insured;
- (c) any public appointment held by the Insured;
- (d) death, bodily injury or damage to property.

Other than in connection with certain printed publications, it is unusual to provide insurance against libel or slander in view of the extreme difficulty of estimating the risk to be undertaken. Fidelity guarantee risks can be dealt with under an appropriate form of policy as can also risks in connection with bodily injury and damage to property. Exception (c) is inserted by reason of the fact that many local authorities call for specific indemnities in their favour in respect of certain appointments which it is usual to give in a recognised form as, for example, for persons appointed as registrars under the Land Charges Act.

CONDITIONS

Claims Procedure

The Insured shall give notice in writing to the Company as soon as possible after receiving information of any claim or loss or any occurrence for which there may be liability under this Policy with full particulars thereof. Every letter claim writ summons or process shall be notified or forwarded to the Company immediately on receipt. No admission offer promise payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim. The Insured shall give all such information and assistance as the Company may require but the Insured

shall not be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Company) shall advise that such proceedings could be contested with the probability of success.

There is little in this condition which differs from the practice in respect of third party insurances generally except for the final clause. This is designed to avoid publicity in those claims where there is little hope of successfully defending an action (see page 208). The cost of Counsel's opinion would be borne by the Insurers.

SCHEDULE

The Insured
and any other person who may become during the Period of Insurance a partner in the Business or Practice

The Business or Practice

Limit of Indemnity

Period of Insurance	Renewal Date
(a) From To	
(b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept the Renewal Premium	

Premium	Renewal Premium
£	£

TREATMENT INDEMNITIES

Some treatment risks have, of necessity, been dealt with in relation to general third party indemnities but the risk of claims arising out of negligent advice or treatment is usually confined, so far as concerns insurance, to the professional classes except, perhaps, in businesses such as those of hairdressers, mentioned below.

Chemists and Druggists

The principal risk usually insured is that of errors in making up prescriptions. Professional qualifications for such work are essential, if insurance is to be provided (see page 209). However, certain chemists and druggists (particularly those in country districts) in the absence of qualified medical practitioners sometimes prescribe or administer treatment for minor ailments and accidents. Such risks are not favourably regarded in the absence

of recognised qualifications for this particular branch of their work, and the fullest information regarding past experience is required.

Hairdressers

Policies are issued in respect of accidents or illnesses arising out of shaving, haircutting and the administration of shampoos and hair tints and dyes. Very serious injuries have been caused by the improper application of dyes or skin stimulants and as the result of burns in the course of permanent waving.

Before proposals are accepted, stringent enquiries are made regarding claims record and experience in the work undertaken, while the tests applied to the customer to ascertain his or her reaction to the proposed treatment need investigation. Indeed, many policies lay down as a condition of insurance the tests which must be carried out before such treatments are given. There is also the risk of substances being applied from wrong containers.

Hospitals and Nursing Homes

As stated in Chapter VIII, insurers endeavour to meet the requirements of hospitals and nursing homes by modifying their normal procedure of excluding treatment risks. Hospitals within the National Health Service in this country do not insure. The risks vary considerably in the different classes of hospitals, which range from those where street accident and general cases are admitted to those primarily engaged in giving advice or treatment for the eyes, ears, or other particular organs, and those which specialise in maternity, or other branches of the work. Operative treatment of one kind or another is usually undertaken, with the attendant risks of swabs or other foreign substances being left in the bodies of patients, which may subsequently give rise to expensive legal actions should litigation be commenced against the hospital itself, as distinct from the surgeon who performed the operation and whose personal liability is not usually made the subject of indemnity under the policy issued to the hospital. Further, X-ray, sun-ray and electrical treatments are increasingly used, each of which forms a latent source of claims.

Radium treatment may sometimes be hazardous and may not always be provided for by the ordinary treatment indemnity. Sometimes, such risks, when offered alone for insurance, are rated upon the number of treatments administered in the year.

Otherwise, premiums may be charged upon the number of beds, wages paid or out-patient attendances, but practice varies.

Occasionally, indemnities are required for blood transfusion risk, and, when this risk is insured separately, it should be made clear whether the indemnity is to relate to claims by donors, or receivers of blood, or both. Here, too, premiums are more conveniently charged upon the number of transfusions in the year of insurance.

Nursing home risks vary considerably and it is usual, subject to enquiries as to the way in which they are managed, only to afford an indemnity in respect of the administration of treatment and not its prescription. Otherwise, the risk run would often be that of affording indemnity to unqualified persons in respect of the prescription, treatment or diagnosis which should only be undertaken by a qualified doctor.

Opticians

The main risk of opticians is connected with the wrong prescription of glasses, or errors in fulfilling oculists' prescriptions. The risk is not dissimilar to that of doctors and of dentists already discussed. Professional qualifications again are essential.

There is also the risk of wrong replacement of lenses after repair. The fitting of contact lenses is a specialist optician's business and cover for such risks would be given only subject to enquiries as to the qualifications of the proposer.

heavier risks than houses set well back in a cul-de-sac with few passers-by.

The presence of numerous children increases the necessity for care in surveys because defects not dangerous to adults may give rise to serious claims for accidents to children.

It must be ascertained whether the owner or the tenant is responsible for (a) external and (b) internal repairs. The owner will not generally be liable for accidents through defects which it is not his duty to remedy.

Shops

Many of the features mentioned under the heading of houses and tenements here likewise need attention. The tenant is usually liable for repairs, but where the owner retains responsibility for the state of the structure, the risk of accidents may be greater than with houses, on account of the larger number of persons likely to visit the premises. For this reason, too, there will be a greater tendency for floor boards and door steps to become dangerous through wear and, in consequence, periodical inspection of the properties will be necessary. Shops are rarely set back from the pavement and, as they are usually situated in more important streets with a large number of persons likely to pass by, the state of the roof, gutterings and the like, is important.

Offices

The age and suitability of the premises for offices must be considered as well as wear and tear occasioned by the number of persons who use the premises. The condition of the staircase, and adequacy of natural and artificial lighting, where this is the concern of the proposer, require investigation. If large office blocks are proposed, the external structure needs examination; if portions of decaying stonework fall in busy streets, they may cause serious accidents.

Where the owner retains control of a portion of the premises as, for example, a common staircase, his duty to users will be greater than if he retains no such control. In the former event, the arrangements for lighting the staircase require comment. It must be ascertained who is responsible for turning on the lights and for putting them out and whether there is any risk of lights being extinguished before all the tenants have entered or left the building.

Warehouses, Factories and other Business Premises

The considerations already mentioned as regards houses, shops and offices apply, in the main, to these types of risks. In par-

ticular, attention must be directed to the extent to which the public have occasion to frequent the premises, and the roads and pathways adjacent. The situation of the offices, in relation to the remainder of the buildings, gives some idea of those portions of the premises most likely to be visited by third parties, while loading platforms or delivery hovels must also be inspected, with particular regard to the number of employees of others who are likely to have occasion to use them.

The trade carried on may involve the use of buildings of unusual construction, with unfenced pits or similar traps, and these must be noted. The likelihood of children from neighbouring houses and schools being allowed to play in the vicinity of such premises should not be overlooked.

Water Apparatus

All premises not solely occupied by the insured involve risks of water damage to the property of other tenants, caused by the overflowing of water pipes, tanks, or other water apparatus in the premises. If through some defect water apparatus breaks down, causing damage to furnishings or stock in premises below, the resultant claim, if any, may be heavy. Serious claims are to be expected when valuable stock, such as paper, books or clothing, is damaged thereby. It is therefore advisable for the surveyor to satisfy himself that the water apparatus in premises is of recent construction and is well maintained.

It is prudent to discover whether gutterings are periodically inspected and cleaned, in order that the risk of claims on this account may be reduced to a minimum. An indication of the type of contents of adjoining premises, and especially of the basements, is often useful.

SANITATION RISKS

When an indemnity is to be provided in respect of illnesses caused, or alleged to be caused, by defective sanitation, the surveyor needs to ascertain:

- (a) when the drains were installed;
- (b) what arrangements exist for their periodical examination, and by whom; and
- (c) whether there is any history of claims on account of their condition.

The inspection of such apparatus, at regular intervals, is material. It is useless to delegate such work to an employee unfamiliar with drainage systems; it is desirable that such inspections should be undertaken by a builder or plumber of standing.

who should be required to furnish to the owner written reports on the condition of the drains. The age of the drains gives some indication of the care exercised in their construction for, within recent years, this has been dealt with in Building Acts and Bye-laws of public authorities. Drains over twenty years old call for cautious treatment as certainly does cess pool sanitation.

STOPCOCK RISKS

The stopcock risk, namely, the risk of accidents caused by defects in the stopcock controlling the water supply, is practically confined to houses and small shops, but wherever stopcocks exist the surveyor should satisfy himself that the caps are adequately secured, and that the box is otherwise complete and not likely to cause accidents by reason of careless setting.

GENERAL THIRD PARTY RISKS

The risks to be surveyed range from small factories, of the converted dwelling house type, to large undertakings which require the use of many acres of land and numerous buildings and a diversity of trade processes.

In practically every instance, the occupier, on whose behalf the policy is to be issued, is responsible for the upkeep of buildings and the features mentioned in connection with property owners' risks, therefore, apply to general third party surveys. In addition, however, the surveyor must deal with all those other factors inseparable from any business undertaking which may give rise to accidents, of one kind or another, to persons not in the service of the proposer who may have occasion to visit the premises or to use highways and paths adjoining or passing through them.

The work undertaken in respect of which an indemnity is provided often takes place away from the insured's own premises and, if possible, the surveyor should take an opportunity to witness work in progress. Builders and contractors, electricians, engineers of various branches, plumbers and many others, may incur very little third party risk on their own premises, which may rarely be visited by others, but when carrying out their work elsewhere the risk of accidents to third parties may be considerable.

Insurers need to know what factors render accidents likely by reason of the type of business (related to the number of third parties likely to visit the premises), and how accidents may be minimised by the recommendation of reasonable precautions. It is useless for the surveyor to make suggestions for improvements

in the risk which will hamper the proposer in his work or put him to unwarranted expense, particularly if the precautions suggested are not those normally adopted in this particular trade. In brief, the surveyor must use his discretion, and this, together with common sense, underlies the whole of successful third party underwriting.

Occupation of Proposer

The description of the work undertaken, given in the reply to the proposal question, may be too general. The surveyor is then expected to describe the occupation in such a manner as to enable the underwriter to visualise precisely the scope of the proposer's activities.

Situation of Risk

The situation of the premises calls for more than a mere address. It must be indicated whether the premises are isolated, whether they stand well back from any thoroughfare, whether they are walled or fenced in, and whether the public can pass freely by the outside of the buildings.

Buildings

Information on lines similar to that given under the heading of property owners' risks will be required, bearing in mind that fixtures and fittings belonging to the occupier may cause accidents as may also unprotected floor or wall openings.

Machinery

The machinery used, with particular reference to power-driven units, needs attention, and the source of power, whether water, steam, gas or electricity, should be stated.

The use of sharp-edged mechanical tools and unprotected belting should be mentioned, with particular regard to the extent to which persons, other than the employees of the proposer, may come into contact with them. Unfenced machinery, in contravention of the Factories Act, 1937, should be reported, for there is always the possibility in such circumstances of a common law claim.

Dangerous Substances Used

The use of anything inherently dangerous (other than gas and electricity for power), requires detailed description, with methods of storage and the possible consequences to third parties of the escape of such substances. Among others, the use and storage of acids, gases under pressure, acetylene, in solution or other-

wise, and explosives, need attention. The storage of explosives, and such dangerous things as acid containers, well away from the reach of children who may be trespassing upon land, is important.

Third Parties Using Premises

Persons likely to visit premises comprise those who call on business, travellers, customers, and the like, the employees of others, who may have occasion to collect or deliver goods or to perform work for their employers on the premises, and mere visitors as, for example, individuals or parties who may be conducted round the premises. The fact that factory and insurance inspectors and surveyors may visit the premises should not be overlooked as they, too, are third parties.

The situation of office blocks, showrooms, and loading and unloading places, requires particular investigation, always with a view to determining to what extent third parties are likely to meet with accidents on account of defects in the premises, unfenced well holes, and the machinery used.

Where parties are conducted round premises, enquiries should be made as to their supervision, with particular reference to the ages of students and other young people. The frequency with which such parties are entertained should be stated.

Work Away from Proposer's Premises

It has already been mentioned that the main risk often lies in the work undertaken away from the premises. It is essential that a clear description of such work should be obtained, including some reference to the number and extent of outside contracts in the year, and the type of premises upon which work is undertaken, whether mainly small or high-class private dwellings, shops or offices, factories or theatres, or buildings in course of erection and, in such circumstances, whether the proposer is a principal contractor or sub-contractor.

Erection risks, whether of builders, engineers or others, may be particularly hazardous and necessitate the use of lifting tackle, and full details of the weight and size of plant to be installed should be given, together with the height at which work is undertaken, where this is likely to affect the risk. Installation risks of machinery, safes and strong rooms and other heavy items, call for an examination of the risk of damage to property in which they are to be installed. Heavy units may cause floors to give way, with consequent bodily injury and damage to property claims.

Constructional Contracts

These contracts, whether they are for buildings of one kind or another, or for constructional work connected with bridges, tunnels, sewers, and reservoirs, need specialised treatment. However, some knowledge of engineering practice on the part of the surveyor is desirable, and he should be able intelligently to read and interpret plans and specifications necessarily incidental to such work.

As in other third party surveys, the main feature to discover is the degree of risk of injury to passers-by or users of the site while the work is in progress. Some contracts may relate to work executed in isolated places, as, for example, the construction of a new reservoir, with a comparatively light third party risk, unless there should be the employees of other contractors working on the same site. Other contracts may be carried out in crowded areas, such as the laying of a new water main through an important thoroughfare, or the erection or reconstruction of a bridge without unduly limiting the existing traffic above and beneath, as so often happens with river and canal bridges.

The method of procedure must be investigated in such a manner that the underwriter, for whose benefit the report is written, may visualise the work as it proceeds, although at the time the report is made it may not have been commenced. Much of the work may be delegated to sub-contractors whose competence for the work to be undertaken should be beyond dispute. Such sub-contractors may give indemnities to their principals for accidents arising out of their portion of the work and the terms of such indemnities should be stated. If sub-contracts have not been placed at the time of the proposal, an opportunity may occur of insisting upon the insertion of suitable indemnities in favour of the principal, thus reducing the insurer's ultimate liability if the proposal under consideration relates to the risk of the principal.

Employees: Number and Wages

As a rule, the number of employees and the wages paid give the best indication of the relative extent of the risk, for each additional person employed is a potential source of negligence. Information under these headings is given in reply to a proposal form question and the particulars there disclosed should be checked, as far as possible, by observation.

When not given in the proposal form, divisions of the estimated amount should be obtained as between wages paid to

employees engaged on the proposer's own premises and those paid to employees engaged elsewhere.

Tidiness

Untidy or crowded premises often indicate carelessness and give a bad impression of the third party risk. Neglect to clear away rubbish may sooner or later lead to neglect to take other ordinary precautions. Lax management is particularly undesirable from the third party insurance point of view.

The general layout of the premises and their contents and the convenience of the premises for the purposes for which they are used must receive attention.

Flood Risks

Some third party policies specifically exclude flood damage, but others do not. In any event, it is essential that the surveyor should draw attention to risks of flooding, where these exist. Public authorities, for example, may be responsible for water courses or water works, which may include elevated reservoirs. The breakdown of the containing dams of reservoirs or the overflowing of watercourses may be a catastrophe risk and the past experience requires investigation. The date of construction of reservoirs, their respective capacities and the frequency with which they (and especially the dams) are inspected by skilled engineers, together with details of surrounding properties which might be affected, require comment.

Effluents

Many commercial processes necessitate the disposal of considerable volumes of waste products, often in solution. It is a common practice for such effluents to be passed into adjoining rivers or streams, and thereby material damage may be caused to fishing grounds lower down stream. Most factories are faced with the problem of the disposal of such products and the surveyor is expected to deal with this in his report. Similar considerations arise with sugar beet works and oil refineries.

Liability for the accidental escape of substances likely to cause injury to fisheries may be the subject of a third party policy. For example, petrol may escape from bulk storage tanks and, apart from pollution risks, may involve risks of fire and explosion damage. In so far as petrol and similar products are concerned, there are stringent regulations as to the methods of storage to be adopted when the tanks are situated on the banks of a river. A plan of the district is essential, showing the nature and extent of adjoining premises.

Past Experience

When past accidents are enquired into, some common cause may be found which simple precautions will remove, while the too frequent occurrence of accidents may indicate abnormalities of the risk which render it uninsurable at ordinary rates.

SPECIAL RISKS

Advertising Signs

Many third party claims arise out of the use of advertising signs of various kinds. Signs are often fixed and then disregarded until they fall. Enquiry must therefore be made as to their age, methods of fastening to walls, or otherwise, by whom they were erected, by whom they are maintained, by whom they are inspected and with what frequency. Many traders exhibit signs which do not belong to them. In the event of an accident ownership may determine liability, and should receive comment.

Apart from the risk of signs falling, the methods of illumination may involve hazard. Electric signs frequently require high voltages and the possibility of accidents to others having work to perform on the face of the building to which they are attached requires investigation. In particular, neon signs, apart from requiring current up to 7,000 volts, involve the risk of accidents caused by falling glass from their tubes and, in busy thoroughfares, this risk may be considerable. Adequate maintenance by skilled workmen is the principal requirement.

Lifting Machinery

Passenger lifts are normally the subject of specific policies, but general third party policies usually extend to provide indemnity in respect of accidents through the use of hoists, cranes, teagles and other plant essential to many kinds of work.

Accidents connected with the use of lifting machinery are frequently serious, and it is essential that the risk be minimised, as far as possible, by periodical inspection by competent persons. Sometimes, particularly when a proposer retains his own engineering staff, it is difficult to prevail upon him to incur the expense of independent inspections and, while no alternative can be so satisfactory, inspections by the proposer's own staff may be accepted, subject to records being made in a book kept for the purpose. Such inspections, however, would not have the same value as those by an independent party, in the event of a claim in Court.

The significance of lifting machinery lies in the extent to which persons (other than the insured's employees) may be injured by its use. There is also the risk of injury to carters and others engaged in collection or delivery of goods.

Car Parks

Car parks are provided by public authorities for the parking of cars in their areas, and many private firms provide car parks for the use of their patrons. For example, hotels, cinemas, and race-course owners provide parking accommodation. They thus incur certain liabilities to those thereby invited to make use of the facilities offered.

The precautions taken for the safety of vehicles left on the premises must be known, the method of supervision in force and particularly the form of receipt given for the vehicles parked. The receipts should disclaim all responsibility for accidents of any kind and no vehicle should be allowed to leave the premises until the receipt has been delivered to the attendant. Cramped accommodation increases the risk of accidents and should be regarded unfavourably. The surveyor should ascertain the maximum number of cars which can be parked upon the premises and he should indicate the probable average value of the vehicles. The surface of the car park gives some indication of the risk of damage to vehicles on this account. Many claims for bodily injuries arise from oil left on parking places and the steps taken to reduce the risk of accidents from this cause should be noted.

Falling Trees and Branches

When the surveyor inspects premises, whether country estates, farms, schools or other places where there are growing trees, he needs to consider the risk of accidents to third parties occasioned by falling trees or branches. It is necessary to ascertain the type of trees growing on the premises, their age and whether or not the situation is exposed. It is useful also to know if trees have fallen in the past, not only on the insured's premises, but also on surrounding land. The subsoil has some bearing upon the risk because it may be that chalk is not far below the surface, so that the roots may not be able to penetrate to such a depth as to render trees reasonably safe in high winds.

Elm trees are particularly dangerous, from the third party point of view, not only on account of their habit of shedding branches in calm weather, but also because they are not deeply rooted. There is always the likelihood that internal decay may

have proceeded apace without it being noticeable by a cursory inspection.

It is at all times essential to state the extent to which members of the public are likely to come in contact with the trees. Particulars of the precautions taken by way of inspection by a competent woodman of trees which abut upon public highways and footpaths must be given, together with details of the proximity of houses or other buildings which do not belong to the proposer.

Not infrequently the risk of accidents though falling trees may be worsened by the removal of woods and spinneys on adjoining land. These may have served as windbreaks to trees on the proposer's land. Observation of recent changes of this kind in the immediate neighbourhood may be valuable.

Products Liability

Where it is desired to include an indemnity in this respect (see Chapter IX) a full description of the goods supplied must be obtained. It is essential with a retailer for the surveyor to be satisfied that the insured will be able, without doubt, to indicate the source from which any particular item was obtained, in order that the insurers may have an opportunity of obtaining indemnity in respect of any claim in respect thereof from the wholesaler or manufacturer.

So far as regards wholesalers, the surveyor must ascertain that every reasonable precaution is taken in the preparation or manufacture of goods, and complaints received in the past should be investigated.

Commodities of food and drink and their containers come under this heading, but are separately discussed in the following section.

Food and Drink Risks

Such risks are most commonly insured by caterers, whether in connection with hotels, restaurants or cafés, or by those otherwise engaged in the sale of food or drink to the public. The outstanding feature which requires attention is the cleanliness of the kitchens or other places where foods are prepared, but the methods of handling food, the means for its preservation (by refrigerators, ice boxes, or otherwise), also need investigation. The extent to which foods are reheated on retail premises is often an indication of the degree of risk.

The surveyor should ascertain the sources from which goods are obtained. He should satisfy himself that the firms mentioned

are of first-class standing, and that individual items may be proved to have come from a definite source, for it may be necessary to obtain indemnity from the wholesaler or manufacturer who supplied articles of food or drink alleged to have been unsatisfactory.

Particular attention should be given to the sources of supply of tinned foods, meat pies and other goods which are likely to deteriorate rapidly. The extent to which such foods are sold should be stated.

Surveys of premises where foods are manufactured call for special care as to cleanliness and the precautions taken to ensure that no foreign matter finds its way into ingredients.

Fire and Explosion Risks

Insurers are, as a rule, not prepared to provide for damage caused by fire or explosion to property which is in the custody or control of the insured, or upon which he or his employees are or have been working. The use of any process involving the application of heat naturally suggests a third party fire risk, but it is necessary only to consider this in relation to the risk of fire spreading to other premises, to parts of the premises not occupied by the proposer, or to property not belonging to the insured upon which he has not been working. If a plumber, for example, performs certain work, the insurers exclude liability for damage caused by scorching through the use of a blow lamp, but if a spreading fire was caused by negligent workmanship, damage to property not being worked upon would be covered within the terms of the ordinary fire and explosion extension of the cover.

Adjoining and surrounding properties need to be considered for there may here be a heavy catastrophe risk.

In certain trades, explosions through the accumulation of dust are of somewhat frequent occurrence and may result in heavy claims. Wherever a process involves the production of inflammable dust, as in cotton and flour mills, the methods adopted for its removal call for investigation. The risk of explosion in the collector and its relative situation must be taken into account.

Where liability for fires and explosions originating on the insured's own premises is to be the subject of third party indemnity, the rate charged for similar risks for fire insurance gives a general conception of the extent of the risk. Where work is undertaken on the premises of others, the type of business carried on at such premises, or the nature of the materials stored, gives the only indication of the extent of the risk.

Bodily injury risks, consequent upon fire and explosion, are normally insured in connection with cinemas, theatres, hotels, schools, hospitals and other premises where numbers of persons may be congregated. The principal feature for the surveyor to explore is the adequacy of the exits and means of escape generally. The provision of panic-bolted doors and other suitable emergency exits is essential. Care is needed when surveying old buildings intended to house many persons, particularly at night, such as schools and hotels.

Railway Indemnities

Traders frequently find it necessary to arrange for their premises to be served by railway sidings or to obtain warehouse accommodation on railway premises. When this is so, a clause is invariably inserted in the agreements under which the required facilities are granted, whereby the trader is made responsible for third party claims brought against the railway in respect of accidents arising out of the use of their premises. Many such agreements go far beyond common law liability for the negligence of a trader's own employees and require him to assume responsibility for accidents occasioned by railway employees, while undertaking work in connection with the sidings or warehouses.

The surveyor should be furnished with a copy of the indemnity clause contained in the agreement. In his survey, he must have regard to any reference in the agreement to the provision of adequate fencing to discourage trespassers, and the extent to which the railway will operate rolling stock on the siding. More important still, however, is the risk of trucks running away and thus causing collisions on passenger lines. Attention must therefore be given to the safety devices provided; whether these comply with official regulations; whether, in fact, any truck running away could, by a combination of circumstances, reach a passenger line, and whether such line is used for main, local, or branch services.

The safety devices used include the provision of gradients tending to discourage motion in the direction of the passenger line, the insertion of catch points at crossings in order to derail runaway trucks unless the points are set in their favour, and the presence of sand drags to stop such trucks. A sand drag consists of railway lines laid in sand, in a dead end, to which runaway trucks would be automatically led, unless the points were deliberately set to allow passage to the main line. Such points are usually controlled by the signal box and, in this event, unauthorised interference is not to be expected.

The surveyor must recognise that sidings off main passenger lines carry considerable catastrophe hazards, and surveys therefore need to be undertaken with the utmost caution.

Foul Berthing Risks

Many third party policies exclude all berthing risks which may arise out of the ownership or occupation of wharves, quays, and docks, but occasionally requests are received for their inclusion. The risk lies in damage which may be caused to vessels moored to the particular wharf, quay, or dock, by reason of the uneven settlement of a vessel when the tide goes out, caused by an uneven bed. A report by a marine surveyor is desirable, but for ordinary purposes it is necessary to consider the tonnage of any vessel likely to visit the wharf; the frequency with which vessels are moored there; the means which have been taken to provide a proper bed upon which vessels may rest and the precautions which are taken to maintain the bed in a proper state. It may be that damage can be caused by materials spilled while unloading and if such material is not removed from the berth after each unloading there may be serious consequences. The depths of water at low and high tides (particularly at spring tides) and the depth of water drawn by vessels using the wharf are important.

Foul berthing may result in the breaking of a vessel's back, with a heavy claim upon the insurers, who must not overlook the fact that the marine underwriters, upon receipt of a claim for such damage, will at once seek indemnity by subrogation from the owner of the wharf suspected of causing the damage.

COMMON RISKS

The following summaries of special features to be observed in relation to certain common risks may prove of value as indications of the general lines upon which third party reports are usually prepared.

Retail Shops

The number and wages of employees—risks inherent in the particular trade—pieces of fat, or other materials on floors (for example, butchers and fishmongers)—risk of damage to customers' clothing by projecting nails in packing cases, or by articles exhibited (butter and the like in grocery stores)—risk of injury to customers by falling articles which may be attached to ceilings or arranged for show in perilous mounds (ironmongers and general stores)—conditions of premises, forecourts, stairways,

cellar flaps, service lifts and other machinery—congestion of premises where a large trade is carried on in restricted space—bursting of bottles where wines, beers, spirits, or cordials are exhibited and sold.

Hotels, Restaurants and Cafés

Layout of dining and refreshment rooms—crowding of tables—type of customers—prices charged—seating accommodation—condition and lighting of premises, staircases and other steps—sources of supply of food—extent to which tinned foods and meat pies are served—whether foods are re-heated—facilities for storage, such as refrigerators and ice boxes—general cleanliness.

Where hotel proprietor's liability is to be covered: number of letting bedrooms—whether the appropriate Notice from the Hotel Proprietors Act, 1956, is posted—length of service of servants entrusted with bedroom keys—arrangements made for guests to be provided with keys—details of safes provided—manufacturer's name—age of safes—sizes—whether thief-resisting or otherwise—where safes are situated—who holds the keys—whether reminders as to depositing valuables with the management are posted in bedrooms—form of receipt given for articles deposited—garage facilities—receipt ticket wording—extent to which cars are parked outside premises, or in drive—maximum number of cars on premises at any one time—average value of such cars—arrangements made for their supervision—posting of suitable disclaimer notices.

Estates and Farms

Acreage divided as to arable, pasture and woodland—buildings—adjoining highways, paths, rights of way through land—proximity of elm and other dangerous trees to public roads—possibility of yew or other poisonous trees likely to affect cattle—ditches—dykes—fencing generally—nature of work carried on—number and wages of employees—quarries.

Quarries

The proximity of roads, paths, or rights of way—type of district, populous or otherwise—material worked—extent to which explosives are used—where and how these are stored—number of employees of others visiting quarries—fencing of quarry, with particular reference to immediate neighbourhood of workings—situation of nearest schools—use of railway sidings—methods of loading vehicles.

Sports Grounds

The number and capacity of stands—by whom they were erected—method and materials of construction, concrete, steel or timber—their age—by whom inspected and how often—method of seating—control of crowds—provision of storm windows—adequacy of exits—standing capacity of ground—type of matches played thereon—how frequently used—turnstile and exit facilities—distances of surrounding properties—growing trees—risk of falling branches—catering arrangements—pavilions—children's amusements.

CHAPTER XV

CLAIMS

A third party policy (whether this takes the form of one in respect of general third party risks, the liability of a property owner, or otherwise) relates to an indemnity (subject to certain exceptions) in respect of legal liability for accidents causing

- (a) death of, or bodily injury to, third parties, and
- (b) damage to the property of such persons.

Claims, therefore, fall under three main headings, and it is preferable to deal with products liability claims under a separate and fourth heading:

- (1) Fatal injury claims.
- (2) Non-fatal bodily injury claims.
- (3) Property damage claims.
- (4) Products liability claims.

All claims, however, have certain features in common, and these are first dealt with below.

NOTIFICATION OF ACCIDENT

Every third party policy contains a condition regarding the notification of accidents to the insurers. Some policies allow a stated number of days after the occurrence of an accident within which notice must be given, while others require immediate notification. Early intimation of the occurrence of an accident is important because delay may adversely affect the insurers' investigation of the circumstances and, ultimately, their opportunities of dealing with any claim which may result.

PARTICULARS OF ACCIDENT FORM

Immediately notification of an accident is received, the insured is required to supply certain details to the insurers, in order that they may be in possession of such information which experience has shown usually to be necessary.

Sometimes this information is obtained by means of the completion of a suitable form. Often, however, the insured is asked

to give such details as he can by means of a letter, and, in general, the particulars required consist of:

- (1) Date and time of accident.
- (2) The locus.
- (3) A description of the accident, with a sketch plan.
- (4) Names and addresses of witnesses, if any.
- (5) Names and addresses of persons injured, or whose property was damaged.
- (6) Full details of the injuries or damage sustained—
 - (a) bodily injuries
 - (b) damage to property
- (7) Whether any claims have been intimated by third parties. (If a claim in writing has been received, the correspondence has to be forwarded unanswered. If a verbal claim only has been made, details have to be given.)

Other information is required, according to the kind of policy concerned and the type of accident.

When the information is received by the insurers, the policy details are checked to ascertain whether the policy under which the accident is notified is in force and applicable. It is usual for brief particulars of the policy to be copied on to a claim envelope, or facing sheet, for easy reference by the insurers' officials and representatives.

INVESTIGATION

Once an accident has been notified and it has been determined that it is one which may be expected to fall within the provisions of the policy, the insurers, by officials on their own staff, by their assessors, or by their solicitors, proceed to investigate the occurrence, even though no claim may have been made. It is essential that this investigation be made as soon as possible after the occurrence, while the circumstances are fresh in the minds of those concerned, and particularly the witnesses.

The claims investigator, wherever possible, visits the scene of the accident where he endeavours to reconstruct the event and to obtain statements from witnesses. The class of accident indicates to the official the details which will have a bearing on the liability of the insured; thus, if there has been a driving accident or an accident in which cattle may have been involved, the position of the vehicles or animals, the state and measurements of the highway, and the lighting conditions at the time are all relevant. A police report may be obtainable on application to

the proper authority. A plan of the locality may prove useful, and enquiries made at the scene of the accident may result in the discovery of further witnesses of the occurrence.

MEDICAL EXAMINATIONS

When a claim for compensation on account of bodily injuries is received, the insurers may desire a medical examination by their own doctor. If the claimant is represented by solicitors, their consent must first be obtained, and the claimant may require the attendance of his own medical adviser, at the expense of the insurers. A medical examination serves as a means of verifying the extent of the claimant's injuries and their probable cause.

A medical report should disclose the following information:

- (1) The claimant's age, occupation, and physique.
- (2) Medical history and the history of the present incapacity.
- (3) The nature of the injury, with full details as to its extent; also, the probable effects of previous physical defects or infirmities on the injury.
- (4) The probable duration of disability, with an indication as to how soon the claimant may be expected to follow a part and/or the whole of his usual occupation, or to be fit for some other type of work. If there is likely to be permanent incapacity, its extent must be assessed.
- (5) Methods of treatment which may hasten recovery.
- (6) The medical adviser's general impression of the individual.
- (7) The medical adviser's general opinion.

Naturally, each case calls for special treatment, and a medical examiner accustomed to the undertaking of work of this type for insurers requires little, if any, guidance as to the features which will be valuable.

SURVEYORS' INSPECTIONS

When accidents have been occasioned by defects (or alleged defects) in buildings or machinery, it may be necessary to obtain a report on the premises, or on that part alleged to have been defective, from a competent surveyor or engineer. Such a report should deal with the technical features and should indicate whether the defect did, in fact, exist; also, whether reasonable care on the part of the insured could have discovered it. Sometimes photographs are included in the report.

WITNESSES

Statements obtained from witnesses should preferably be written by them, or written at their dictation and signed by them. Even if a witness is unfavourable to an insured's case, his statement is still of value because some indication is given as to the strength of the story to be told by the other side. A person described by the police as a witness but who disclaims knowledge of the event should be asked to sign a statement to that effect.

The information disclosed by the investigation and/or the completed notice of accident form enables the insurers to decide whether or not the accident is one for which the insured may be liable. If the evidence offered is such that it appears to indicate a complete answer to all the allegations which have been made, then a complete denial of liability and a refusal to make any payment will be communicated to the claimant. If, however, the investigations leave doubt as to the insured's innocence, then negotiations for a settlement by compromise will be commenced.

(1) FATAL INJURY CLAIMS

As soon as a fatal accident, likely to be the subject of a claim against an insured, is notified, arrangements must be made for the representation of the insured at the inquest or other inquiry. Any necessary arrangements, such as the briefing of counsel and the attendance of witnesses, are within the duty of the insurers' solicitors.

A coroner's verdict has no bearing upon subsequent civil proceedings. It is his duty merely to enquire into the cause of death. Nevertheless, the sworn statements of witnesses may be important in civil proceedings, and the coroner's depositions are available.

The coroner may order a post mortem examination and in such circumstances an opportunity for the attendance of a medical specialist is usually afforded the insured. The solicitors instructed will, however, take this in hand.

The rights of dependants to claim damages are provided for by the Fatal Accidents Acts, 1846-1908. The Acts provide for recovery of pecuniary loss, and Section 2 of the Fatal Accidents Act, 1846, states: "Every such action shall be for the benefit of the wife, husband, parent or child of the person whose death shall have been so caused." Section 5 of the same Act states: "Parent includes Father, Mother, Grandfather, Grandmother, Step-father, Step-mother and Child includes Son, Daughter, Grandson, Granddaughter, Step-son, Step-daughter". Illegitimate and

adopted children were added by the Law Reform (Miscellaneous Provisions) Act, 1934.

To succeed in a claim, proof of the following is necessary:

- (1) that the dependants, as defined, have suffered or will suffer pecuniary loss from the death;
- (2) that the injury was caused by the wrongful act, neglect or default of the defendant;
- (3) that death was in consequence of the injury;
- (4) that at the time of death the deceased had a right to recover damages.

It is permissible to set up any defence which could have been raised against the deceased had he survived. Hence, if settlement of a claim for injury had been completed with the deceased before death, no further claim by the dependants will lie, and, similarly, where the deceased contributed to the accident by his own negligence, the damages will be apportioned in accordance with the provisions of the Law Reform (Contributory Negligence) Act, 1945.

There is an exception to the requirement that the deceased had a right to recover damages, since it was ruled in *Nunan v. Southern Railway Co.* (1924), 1 K.B. 223, that a contract with the deceased limiting damages to £100 was not binding upon the dependants, and that they could, therefore, recover damages in full.

The damages recoverable where full liability attaches "are such as are proportioned to the injury from such death to the parties respectively for whom and for whose benefit such action shall be brought" (Fatal Accidents Act, 1846, Section 2). Lord Wright, in giving judgment in *Davies v. Powell Duffryn* (1942), A.C.601, said: "It is a hard matter of pounds, shillings and pence subject to the element of future probabilities. The starting point is the amount of wages the deceased was earning, the ascertainment of which to some extent may depend upon the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance that the widow might have re-married and thus ceased to be a dependant and other like matters of speculation and doubt."

This dictum clearly indicates the nature of the enquiries which become necessary before any calculation of a sum for damages can be made. Services rendered by the deceased without pay-

ment may result in a claim, if it can be shown that such services will have to be paid for in the future. Such claims arise where a deceased wife's services are replaced by those of a paid house-keeper. A reasonable expectation of pecuniary benefit is also sufficient to establish a claim.

Since pecuniary loss is the measure of damages, it follows that any benefit to the dependants by reason of properties or moneys to which they have succeeded must be taken into account in arriving at a sum for damages. Examples are real and personal estate consisting of property, stocks, shares, bank accounts, pensions from a voluntary pension fund, and damages awarded under the Law Reform (Miscellaneous Provisions) Act, 1934, so far as any defendant receives benefit from the estate of the deceased.

The Fatal Accidents (Damages) Act, 1908, however, provides that no account shall be taken of any sum paid or payable under any contract of assurance or insurance, and by the Law Reform (Personal Injuries) Act, 1948, benefit under the National Insurance Act, 1946, or any corresponding Act of the Parliament of Northern Ireland is similarly not to be taken into account.

While in some instances damages arising under the Law Reform (Miscellaneous Provisions) Act, 1934, are of little moment because they are applied to reduce the damages payable under the Fatal Accidents Act, in other claims, where there is no dependency, liability under the Act requires consideration.

The Act provides that causes of action subsisting against, or vested in, the deceased shall survive against, or, as the case may be, for the benefit of the estate. As the result of this provision, damages for loss of expectation of life have been awarded by the Courts. These awards, since the decision in *Benham v. Gambling* (1941), A.C. 157, have been on a much more moderate scale than was considered appropriate before. The amount must vary with the age and prospects of a happy life. £200 was the award in *Benham v. Gambling*, in which case the deceased was aged 2½ years. £500 has been awarded for ages in the middle twenties, and over this age the amounts have been scaled down to figures around the £200 mark for ages of 60 and over.

The value of money no doubt influences the Courts in awarding damages, and while the value still continues to fall, it seems likely that larger sums will become payable.

Damages for pain and suffering before death may increase the amount of the award if there is a considerable interval between the date of the accident and the death.

By Section 2(c) of the Act, funeral expenses may be included, and the awards of the Court have usually added such sum to the damages.

(2) BODILY INJURY CLAIMS

Once the investigation of the circumstances of an accident has been completed, the insurers must decide what course of action is to be adopted.

If liability attaches in full, the injured party is entitled to recover such a sum as will give compensation for the injury received, and in the event of a divided responsibility some damages are recoverable by reason of the Law Reform (Contributory Negligence) Act, 1945.

Damages include:

- (a) Special damages, i.e., expenses and financial losses incurred as a result of the accident.
- (b) General damages, i.e., a sum of money to cover items such as pain and suffering, loss of enjoyment of life, continued impairment of health, shortening of expectation of life and prospective loss of earnings or other remuneration.

The complete repudiation of a claim often results in a threat of litigation, which may eventually prove expensive. This knowledge, coupled with the inability to recover costs against some impecunious claimants, may render it worth while to compromise within the possible cost of defence. Once such a course has been decided upon, negotiations are commenced without delay in order to preserve a friendly atmosphere. Where a compromise is sought or a decision to settle made, information must be obtained from the claimant or his solicitors about the pecuniary loss already incurred, and details of the injury with its possible effects. If it seems clear that recovery has taken place, an attempt at settlement may be made by an offer of a reasonable sum for general damages, together with a sum for the provable special damages.

When the injuries are serious, however, and it is clear that incapacity will last for some time, it is necessary for considerable investigation to take place. Permission for a medical examination should be sought, and enquiry into loss of earnings instituted. An approach to the employers usually results in information regarding rate of remuneration and hours of employment, but where the claimant is self-employed, it may become necessary to engage an accountant to ascertain the earnings of his business.

By the Law Reform (Personal Injuries) Act, 1948, Section 2(1), half of the benefits received or receivable for five years

under the National Insurance Acts shall be deducted from the amount of special damages. In consequence, the claimant must give details of payments which he has received or will receive by way of benefit.

The information obtained enables the claims department to form an estimate of the value of the case, and what action is taken depends upon the evidence. If this is favourable, and considered strong, a complete denial of liability and a refusal to make a payment may be intimated. If there is some doubt, then possibly an offer of, say, the out-of-pocket expenses may be made. Where, however, the evidence is not considered favourable, it may be necessary to make an offer up to such a sum as may be awarded by the Courts, and in doing this regard is paid to the possibility of the contributory negligence of the claimant, and to the fact that such contributory negligence will reduce the damages.

A negotiated settlement requires completion by the giving of a discharge by the claimant. Such discharge should incorporate a wording to make it clear that the payment is to be in full satisfaction and discharge of all claims for injuries now or hereafter to become manifest.

Not all claims intimated are capable of settlement by negotiation. It often happens that the parties cannot agree either on liability or quantum, and then Court proceedings often ensue, necessitating the instructing of solicitors to act on behalf of the insured, who now becomes the defendant to the action.

Solicitors advise on a suitable course of action, and, where liability seems to be probable, they may suggest the payment into Court of such a sum as is considered suitable to satisfy the claimant. Such a course may result in further negotiation, even if it does not end in the disposal of the case by the acceptance of the amount standing in Court.

The approval of the Court is required where claims are settled on behalf of infants, and any agreed settlement is the sum to be paid into Court after commencement of the appropriate proceedings. Claims for trivial injury are often dealt with, however, by payment to a parent in exchange for a discharge incorporating an indemnity against the claim being reopened.

(3) PROPERTY DAMAGE CLAIMS

Claims for damage to property may arise in conjunction with, or independently of, bodily injury claims. They may range from minor claims for soiled or torn clothing to more expensive ones, such as those occasioned by the breakdown of water apparatus

with the escape of large quantities of water involving extensive damage to buildings and stock. The term "property" applies to personal belongings, such as clothing and trinkets, as much as to buildings, stock and plant.

Claims may be intimated before the extent of the damage is ascertainable, and, where the damage is serious, it may be necessary to employ an adjuster or some other independent expert to advise on the claim generally and on the reasonable cost of repair or replacement. This enables the insurers to place a value on the claim, and, subject to liability of the insured, it is then possible to negotiate for settlement within such value. In any event, a full statement of the circumstances of the accident is required from the insured, and details of the damage, item by item.

The claimant, on proving liability, can recover as below:

(1) For a chattel totally destroyed, its value together with reasonable consequential loss;

(2) For a chattel not destroyed but damaged only, the measure of damages is (a) the cost of repair, (b) depreciation in value, and (c) the cost of hiring another during the repair of the chattel damaged. (Loss of use or loss of profits may be recoverable where the expense of hiring has not been incurred.) Depreciation of a damaged chattel may prove a source of anxiety, since the argument may be advanced that the mere fact of repair, following an accident, has reduced the value of the chattel in the event of sale. If such depreciation has occurred, there may be a liability to make good the loss sustained, but it is the amount of depreciation which is speculative, and a compromise is usually necessary. If a replacement of part only of property is necessary as, for example, where part of a suit is damaged, and a demand is made for replacement of the whole, some deduction should be made for salvage which may still be of some value to the claimant.

(3) For damage to buildings the claimant is entitled to receive (a) the cost of repair, (b) depreciation in value, and (c) consequential loss. When buildings are damaged, it is often wise to arrange for the owner to carry out the necessary repairs. He furnishes an estimate, which is checked by the insurers, or by their independent expert.

(4) For damage to land, the claim is limited to the cost of restoration.

In the event of an action for damages, the onus of proving the loss rests with the claimant. Consequently, if a claim is to be disposed of by negotiation, the same proof is required, and the

claimant must therefore be prepared to substantiate his losses. The insurers, acting on behalf of the insured, are entitled to ask for facilities for, say, the examination of books and documents by experts, and any failure to grant an inspection or examination must be looked upon as an indication that the claim may not be well founded. It may then be advisable to give an indication that, until facilities are granted, negotiations must cease. Loss of use claims, for instance, necessitate particular care, as may happen where a shop window may be damaged with loss of use of the window for display purposes. The loss of trade for the period must be substantiated by comparison with the figures for the preceding period (and, if possible, the preceding year), taking into account seasonal trade.

Where other insurers are interested, some claims are settled on a halving or knock for knock basis if the types of policies concerned permit such a procedure.

(4) PRODUCTS LIABILITY CLAIMS

Under this heading it is necessary to consider many classes of claim for injury or damage caused by goods sold or supplied. Claims may range from a bottle of ginger beer to an expensive fur coat, and they may affect an individual or a number of persons. Claims lie in contract, quasi-contract or in tort (see page 129.)

The purchaser of an article who has been injured or contracted illness as the result of some defect or vice may recover damages from the party from whom the article was purchased, based on breach of contract. Where such claims are intimated, it must first be ascertained that there is the relationship of buyer and seller between the parties. Once this has been established, and damage has been suffered, then apart from any express condition in the contract, liability will arise, provided the sale is within the provisions of Sect. 14 (1) and (2) of the Sale of Goods Act, 1893. There may be direct liability on the part of a manufacturer to the consumer (see page 132).

When the insurers are satisfied that *prima facie* the claim is admissible, enquiry is directed to the occurrence. Details of the purchase, the date, and the condition at the time of sale may all be important; also, whether there was a guarantee or a disclaimer of liability to any extent. An examination by a specialist, and possibly experiments with and tests of the article may be desirable. A medical examination may also be necessary—see below under food and drink claims.

In the event of the article having been supplied to the insured under a contract of sale with another party, steps must be taken to seek indemnity from such supplier. The same considerations apply as between, say, the wholesaler and retailer as between the retailer and consumer.

Many injuries which arise from goods supplied do not concern a contract for sale, and the injured party then has no claim whatsoever for breach of contract. Such claims arise in tort, and, in consequence, the claim must be made solely against the party against whom the allegations of negligence may be raised. The enquiries are similar to those already indicated. Where the claim is intimated against a manufacturer, the transfer of the article from party to party may have to be traced, so as to form an opinion as to the possibility of, say, some deleterious matter causing contamination after transfer from the original party. A manufacturer cannot be liable for contamination or the introduction of foreign bodies after the article has left his control.

Food and Drink Claims

The source of the food or drink must be ascertained, and also the effects on other persons who may have participated in the meal at which the commodity was served. Some people are allergic to certain foods, for example, oysters. (The same applies to certain dermatitis claims.)

A medical examination is often required and the examiner should be asked to give an opinion as to whether or not he considers the condition to be due to the article sold. There may be available the remains of the food purchased, and, in such circumstances, steps should be taken to have an analysis. The examiner will ascertain whether the claimant has an allergy which may be the cause of the trouble.

Negotiations for settlement of claims for injury or illness caused or alleged to have been caused by food or drink are often difficult. Claimants may well be fortified with the knowledge that the supplier will not be likely to face the publicity of a court action, and, in consequence, the demands are often out of all proportion to the damage suffered. It is then often necessary to give a firm indication that an offer of settlement is final, and that any further demands by court action will be resisted. This is sometimes successful, but proceedings are at times commenced, when settlement or otherwise is left to the insurers' solicitors.

RECEIPTS AND DISCHARGES

When a payment has been made to a third party, or to his dependants, whether for bodily injuries or otherwise, it is im-

portant to obtain a proper form of receipt, or discharge, in order to guard against re-opened claims later.

For infants it is necessary to obtain the approval of the Court, and to do this proceedings by a parent or guardian are required. Such cases are dealt with by solicitors. Where there is complete recovery from the injuries it may be permissible to negotiate a settlement with the parent, and for the agreed sum to be paid to this party, in exchange for a discharge on the following lines.

Form of Discharge by Parent for Injuries to a Child including an Indemnity Against Re-opened Claims when Child Attains Majority

I, (name of parent) of hereby acknowledge to have received the sum of (as an *ex-gratia* payment) which amount is paid to me in behalf of in full satisfaction and discharge of all claims competent to me or to my son/daughter for all injuries or injurious results or damage to property, whether now apparent or not, caused by or arising out of the accident to the said which occurred on or about the day of 19..... at

IT IS UNDERSTOOD AND AGREED that this payment of does not imply any admission of liability on the part of the said

IN CONSIDERATION OF THIS PAYMENT I hereby agree to indemnify the said and any other person or persons against any claims that may be made upon them by or in behalf of my son/daughter above named, in respect of the said injurious results.

Dated this day of
WITNESS to the signature of

Signature.....
.....

Settlements for injuries to a married woman should be such that the losses of the husband are also included, in which event a joint discharge from both the husband and wife must be obtained.

Joint Discharge from Husband and Wife

WE, (name of husband) and (name of wife) of hereby acknowledge to have received the sum of pounds which amount is paid to us in behalf of (name of the insured)

of in respect of the claim made by us upon him for bodily injuries and other loss sustained through an accident which occurred on or about the day of 19..... at and we agree that the said sum is paid with a denial of liability on the part of the said and we agree to accept the same in full and final settlement, satisfaction and discharge of all claims upon the said (or any other person or persons) in respect of or in any way arising out of the said occurrence and for damages and injuries whether now or hereafter to become manifest and to the intent that the said and all other persons be absolutely and finally exonerated and discharged from all further and other claims of every nature and kind whatsoever by us or in our behalf arising out of or connected or traceable to the said occurrence.

Dated this day of 19.....
Signature.....

WITNESS to the signature of

..... Signature.....

WITNESS to the signature of

.....

Form of Discharge Suitable for Personal Injury and Damage to Property Claims

I, (name of the claimant), of hereby acknowledge to have received the sum of pounds, which amount is paid by (name of the insured) in respect of the claim made by me upon him for bodily injuries and other loss sustained through an accident which occurred to me on or about the day of 19..... at and I agree that the said sum is paid with a denial of liability on the part of the said (or any other person or persons) in respect of or in any way arising out of the said occurrence and for damage whether now or hereafter to become manifest and to the intent that the said and all other persons be absolutely and finally exonerated and discharged from all further and other claims of every nature and kind whatsoever by me or in my behalf arising out of or connected with or traceable to the said occurrence.

Dated this day of 19...
Signature.....

WITNESS to the signature of

.....

The forms must be modified to suit particular circumstances, but the principle always to be observed is that of guarding against the possibility of a further claim. The stamping of such documents calls for attention.

EXCESS RECOVERIES

Some third party policies require the insured to bear a first part and, for small claims, the whole of each and every claim. Unless the excess is substantial, the insurers may prefer to settle all claims and to recover the amount of the excess from the insured subsequently. This enables them to deal with all claims by their own methods, from the outset. Otherwise, the insurers may find themselves faced with a claim where the position has been prejudiced by some action by the insured.

CONTRIBUTION

In some instances, it is found that more than one policy is in existence relating to the same loss or damage. By the terms of most policies, the insurers may claim contribution rateably from co-insurers. In this event it is customary for the insurer with the largest interest to settle the claim, subject to the approval of the others.

REVISION OF POLICIES

When a claim has been made, it may be found that there is some doubt as to whether the policy properly described the risk undertaken, or it may be found that the risk has increased since the time it was first accepted. The papers should then be passed to the policy department for immediate revision, or for revision at renewal if the premiums charged appear to be insufficient in the light of the claims experience.

CHAPTER XVI

INTRODUCTION TO ATOMIC ENERGY AND LEGAL FEATURES

This book deals with third party insurance, but it is impossible to understand the way in which this class of business is to be affected by atomic (or nuclear) energy without certain general basic knowledge. In this chapter, therefore, the scientific facts are summarised, the legal features outlined, and an account given of the development of insurance negotiations. The two succeeding chapters cover respectively the insurance of reactors and the insurance problems by reason of the use of radioactive isotopes.

GROWTH IN THE SIZE OF RISK

When fire insurance began towards the end of the 17th century, it was mainly concerned with the small private dwellings, shops and farms of those days; manufacturing industry with its large factories, warehouses and other premises did not exist. When attention was directed to the insurance of liabilities to the public, first for horse-drawn vehicles but principally because of the use of mechanically-propelled vehicles at the end of the 19th century, the liabilities for which insurance was sought were not heavy contrasted with those incurred by, and insured for, the modern aircraft operator. Likewise, when the use of pressure vessels necessitated engineering insurance from 1858 onwards, the explosion hazards were not so great as they are now, if only because of the relatively small vessels then used and the defences open to an operator after an accident had occurred causing injury to third parties or damage to their property.

The 17th century fire insurer knew the probable extent of any loss that he might suffer as the result of any peril that he might insure, and, in any event, the sums at risk rarely exceeded a few thousand pounds. The liability insurer of the last century, fully in keeping with the requirements of his time, could limit his liability to a sum well within the compass of his funds, and limits from £100 to £1,000 any one accident were common. The engineering insurer covered the loss of pressure vessels of relatively low values, vessels which were unlikely to cause catastrophes beyond his ability to meet the insured liabilities arising therefrom.

In the nuclear age, however, everything has changed, for the progress of nuclear physics within the last 20 years or so has presented insurers with risk problems of a magnitude never before experienced. Reactor installations, including their associated power plants, may cost as much as £60,000,000 to build. Insurance for material damage risks alone may consequently be called for to very large figures, and the potential liabilities which may be incurred towards third parties as the result of a catastrophe incidental to the use of reactors, more especially by reason of the new peril of radioactive contamination, have in some instances been put at astronomical figures.

It follows that the dimensions of the cover which it is necessary to provide pose problems for insurers, particularly because their liabilities are by no means restricted to any limitation of liability in amount which may be provided by legislation. They must also be ready to insure the installations themselves, in the knowledge that the need to implement the liabilities assumed towards third parties is likely to arise at the same time as the major claim for material damage to the installation itself. Moreover, at least as important, there is the new problem, mentioned above, arising out of the hazard to insurers of radioactive contamination, a hazard which has not hitherto existed in any major degree, and certainly not in any catastrophic form.

It is hardly surprising that, having been asked to insure nuclear projects, insurers have approached such risks with considerable thought and some apprehension. But, notwithstanding the lack of past experience on which to build, and the consequent uncertainties of the future, it is to the credit of the insurance markets of the world that they are prepared to go along with the manufacturers and operators of nuclear plants and to play their part in enabling mankind to benefit to the maximum from the early development of the peaceful uses of nuclear energy.

THE SCIENTIFIC FACTS EXPLAINED

The atom is the smallest amount of an element which has the chemical properties of that element. At its centre is the nucleus* (carrying a positive electric charge) around which electrons move orbitally. The nucleus is presently believed to be made up of protons and neutrons (except for hydrogen which normally has no neutron). Protons are positively charged; neutrons have no charge. If average atoms could be lined up side by side then

* The technical terms used in this section are explained on p. 254 *et seq.*

100,000,000 of them would take up one inch. The nucleus is 100,000 times smaller than the atom itself.

In relatively recent years it has been possible to split the atom by a process known as fission. When this is done in fissile atoms neutrons are given off and energy is released in the form of heat. In a nuclear reactor (formerly termed a pile) atoms are thus split, and a chain reaction is set up in which a nucleus of fissile material (such as uranium 233, uranium 235 or plutonium 239) captures a neutron thus given off resulting in fission which, in turn, releases yet more neutrons to cause further fission.

A nuclear reactor is a structure in which a fission chain reaction can be maintained and controlled so that from every fission there are one or more neutrons released to cause another fission. The important word here is "controlled" for, if control is lost, a "run-away" may occur, and the consequences may be very serious. The neutrons released in the fission process travel very fast, and in some types of reactor it is necessary to slow them down with what is known as a moderator (e.g., heavy water or graphite) in order that the chain reaction can proceed. Control is obtained by the insertion, as required, of control rods of substances such as boron or cadmium, which are able to absorb neutrons. When the rods are inserted the reaction is slowed down; when they are withdrawn the reaction is speeded up. It is usual for reactors to be so constructed that the controls operate automatically and thus prevent a "run-away" reaction.

When these reactions take place some of the fuel, for example, uranium, is converted to fission products, which are radioactive, that is to say, they spontaneously disintegrate and give off radiations—alpha, beta or gamma—which, where there is over-exposure thereto, may endanger human life. The materials (usually steel and concrete) surrounding the fissile core of the reactor also become radioactive as does also the moderator, whether heavy water or graphite. Hence, the problems which arise not only in dealing with accidents happening within a reactor—since the longer it has been in use the greater the degree of radioactivity—but also in connection with its maintenance. Radioactivity gradually decays, although the period taken for all radioactivity to cease varies with the element. It is usual to refer to the half-lives of the different elements, that is, the period of time required for the radioactivity of an element to be reduced by one half by the gradual disintegration of its atoms. Half-life may vary from less than a millionth of a second to millions of years. One radioisotope of arsenic, for example, has a half-life of only 39 hours, tritium the radioisotope of hydrogen

12 years, radium 1,620 years and uranium 4,500,000,000 years. Herein lie the difficulties in the disposal of radioactive waste from reactors.

The most important long-term use of atomic energy is probably for the production of power. The heat produced by a chain reaction is removed by a coolant and through the medium of heat exchangers the heat produces steam by which conventional turbo-generators can be powered to produce electricity. One pound of uranium in size about one inch cube contains energy equivalent to 1,500 tons of coal.

There are about 100 elements in the world from which everything is made, but every element is found in more than one physical form. Chemically, each form is the same and the physical difference is only in the number of neutrons in the nucleus of its atom. Each of these forms—known as isotopes—has a different atomic weight. Some of the forms of elements are unstable in that they are changing by reason of radioactive decay and such forms are termed radioisotopes, of which there are some 800. The majority of elements have more than one radioactive isotope, for example, arsenic has 13 commonly known isotopes of which 12 are radioactive. All have 33 protons, the number of neutrons varying from 35 to 47—that with 42 neutrons (arsenic 75) is the only stable one.

Radioactivity may occur naturally or be induced by treatment in a reactor or some other suitable device.

The following definitions are taken from "Glossary of Atomic Terms" prepared by Technical Writers Section of the Public Relations Branch, United Kingdom Atomic Energy Authority, London, S.W.1 (1960 edition), and appreciation of the permission to reproduce them is here recorded. If they are read in conjunction with the foregoing explanation, the reader should obtain sufficient information to enable him to understand the expressions used by those engaged upon the underwriting of atomic risks.

Alpha Particle. A positively charged particle emitted in the radioactive decay of some heavy nuclei, for example, uranium and radium; identical with the helium 4 nucleus.

Atom: Atomic Structure. The atom is the smallest amount of an element which has the chemical properties of that element. The atom consists of a comparatively massive central nucleus carrying a positive electric charge, around which electrons move in orbits at relatively great distances away. According to present theory the nucleus is made up from protons and neutrons. The number of protons present is the atomic number of the element and determines the charge on the nucleus—and hence its chemical properties. The sum of the number of protons and neutrons is called the mass number and determines the mass of the nucleus. The number of neutrons in an atom of a given element can vary, resulting in nuclei that

have the same atomic number but different mass numbers; these variants are called isotopes of the element. The number of electrons in a neutral atom is equal to the number of protons in the nucleus and their charges balance the equal and opposite charge of the nucleus. All atoms of the same atomic number (i.e. same number of protons) are atoms of the same element, irrespective of the number of neutrons present.

Beta Particle (or Ray). An electron, positive or negative, emitted from the nucleus in certain types of radioactive disintegration.

Boron. A non-metallic element, No. 5, obtained from borax or boric acid, which readily absorbs the slow neutrons essential to the uranium fission process in a thermal reactor. It is used for control rods in such reactors, often in the form of an alloy with steel.

Breeder Reactor. Popularly a nuclear reactor which produces more fissile atoms than it burns. Strictly the term should be confined to a nuclear reactor which produces the same kind of fissile material as it burns, without specifying whether or not there is a net gain of fissile material.

Cadmium. A bluish-white, ductile, malleable element, No. 48, resembling tin. It is used for some types of control rod, since it readily absorbs slow neutrons, usually in the form of sandwich type plates (e.g. in the Dido, Pluto, Hifar and D.M.T.R. research reactors).

Chain Reaction (Nuclear). A process in which one nuclear transformation sets up conditions which permit the same nuclear transformation to take place in another atom. Thus, when fission occurs in uranium atoms, neutrons are released which in turn produce fission in additional uranium atoms.

Control Rods. Rods, plates, or tubes of steel or aluminium containing boron, cadmium or some other strong absorber of neutrons. They are used to hold a reactor at a given power level, or to vary the rate of reaction.

Coolant. Any cooling agent. Specifically, a liquid or gas which is circulated through or about the core of a reactor to maintain a low temperature and prevent the fuel from overheating. If the coolant is very hot it can be used to give power (e.g. as at Calder Hall).

Cosmic Radiation (Cosmic Rays). Very penetrating ionising radiation which reaches the earth from unidentified sources in outer space.

Curie. The unit of radioactivity. Is the quantity of a radioactive isotope which disintegrates at the rate of 37,000 million disintegrations per second. The activity of a gram of radium is approximately equal to one curie.

Decay. When a radioactive atom disintegrates it is said to decay. What remains is a different element. Thus an atom of polonium decays to form lead, ejecting an alpha particle in the process. In a mass of a particular radioisotope a number of atoms will disintegrate or decay every second—and this number is characteristic of the isotope concerned (*see also Radioactive Decay*).

Dose-meter (Dosimeter). An instrument for measuring dosage of radiation.

Electron. The negatively charged particle (mass $m = 9 \times 10^{-28}$ gram) which forms a common constituent of all atoms. Its positively charged counterpart of equal mass is the *Positron*.

Fall Out. Radioactive dust and other matter falling back to the earth's surface from the atmosphere after a nuclear explosion.

Fast Reactor. A nuclear reactor in which most fissions are caused by neutrons moving with the high speeds they possess at the time of their birth in fission. Such reactors contain little or no moderator.

Film Badge. A piece of masked photographic film worn like a badge by nuclear workers. It is darkened by nuclear radiations, and thus the radiation exposure of the wearer can be checked by inspecting the film and comparing the darkening or density, after photographic development, with known standards.

Fission. The splitting of a heavy nucleus into two (or very rarely more) approximately equal fragments—the fission products. Fission is accompanied by the emission of neutrons and the release of energy. It can be spontaneous, or it can be caused by the impact of a neutron, a fast charged particle or a photon.

Gamma Ray. Electromagnetic radiation emitted by the nuclei of radioactive substances during decay, similar in nature to X-rays.

Geiger Counter (or Geiger-Muller Counter). A device for counting photons or charged particles by means of the ionisation they produce in a gas.

Half-Life. The time taken for the activity of a radioactive substance to decay to half its original value, that is for half the atoms present to disintegrate. Half-lives may vary from less than a millionth of a second to millions of years, according to the isotope and element concerned.

Heavy Water. Water consisting of molecules in which the hydrogen is replaced by deuterium, or heavy hydrogen. It is present in water as about 1 part in 5,000.

Ion. A charged atom or molecule, that is one which has lost or gained one or more electrons. Ions can exist in gases or in solution.

Ionising Radiation. Radiation which knocks electrons from atoms during its passage, thereby leaving ions in its path. Electrons and alpha particles are much more ionising than neutrons or gamma rays.

Irradiation. The exposure of materials to radiation. In nuclear research, and in the production of isotopes, materials are often exposed to neutrons in reactors. Intense irradiation can alter the physical properties of solids—in some cases weakening them (e.g. fuel elements and graphite), but in others hardening them (e.g. some types of plastics and rubbers).

Isotope. Two atoms are said to be isotopes if they belong to the same chemical element but have different masses. The chemical properties of an atom depend almost entirely on the structure of the system of orbital electrons moving about the nucleus of the atom. The number of orbital electrons is equal to the nuclear charge, the value of which is called the atomic number of the atom (and is always an integer). Isotopes are atoms whose nuclei have the same atomic number but different masses; this means that isotopic nuclei contain the same number of protons but different numbers of neutrons.

Leukemia. A disease of the blood, corresponding to cancer in a tissue, which can be produced by excessive exposure to radiation.

Maximum Permissible Level. The recommended upper limit for the dose which may be received during a specified period by a person exposed to ionising radiation over an indefinite period. So far as is known, a normal person so exposed will suffer no harmful effect.

Mesons. Unstable particles with masses intermediate between those of the electron and the proton, found in cosmic radiation and emitted by nuclei under intense bombardment.

Moderator. The material in a reactor used to reduce the energy, and hence speed, of fast neutrons, as far as possible without capturing them. Slow neutrons are much more likely to cause fission in a U-235 nucleus than to be captured in a U-238 nucleus (see Natural Uranium), so by using a moderator a reactor can be made to work with fuel containing only a small proportion of U-235.

Monitor. A radiation detector used to determine whether an area is safe for workers.

Natural Uranium. Natural uranium contains both the heavier uranium isotope U-238, which is a not readily fissionable material, and is the parent material from which plutonium is created, and the lighter isotope uranium, U-235, which is the fission material or fuel of most reactors. In 140 parts of natural uranium, 139 parts are of U-238, and one part only is U-235.

Neutron. A nuclear particle having no electric charge and the approximate mass of a hydrogen nucleus. It is found in the nuclei of atoms and plays a vital part in nuclear fission. Outside a nucleus a neutron is radioactive, decaying with a half life of about 12 minutes to give a proton and an electron.

Nuclear Reactor. A structure in which a fission chain reaction can be maintained and controlled. It will usually contain a fuel, coolant and moderator and is most often surrounded by a concrete biological shield to absorb neutron and gamma ray emission.

Nucleus. The core of an atom, which may be said to comprise protons and neutrons. It is very small and about 10^{-12} cms. in diameter (a millionth of a millionth of a cm.). The detailed structure of nuclei is not fully known.

Photon. A quantum of electromagnetic radiation. It is a minute amount of energy.

Pile. An obsolescent term for a nuclear reactor; there is a tendency to keep this word for a reactor using natural uranium and graphite.

Proton. The nucleus of the hydrogen atom. It carries unit positive charge and has unit mass.

Rad. The unit of absorbed ionising radiation dose. One rad is equal to an energy absorption of a hundred ergs per gram of tissue.

Radiation. A term which embraces electromagnetic waves, in particular X-rays and γ -rays (gamma) as well as streams of fast-moving charged particles (electrons, protons, mesons, etc.) and neutrons of all velocities, i.e. all the ways in which energy is given off by an atom.

Radiation Hazard. The danger or hazard to living things resulting from the presence of radiation; usually this refers to the danger to health from exposure to radiation.

Radioactivity: Radioactive Decay. The property possessed by some atoms of disintegrating spontaneously with the emission of a charged particle and/or gamma radiation. The rate of radioactive decay is not affected by any normal change of temperature, electric or magnetic fields or chemistry.

Radioisotope. An isotope which is radioactive. Most natural isotopes of mass below 208 are not radioactive.

Reactor (see Nuclear Reactor).

Rem. The unit of dose of ionising radiation which gives the same biological effect as that due to 1 roentgen of X-rays. For X, gamma or beta rays this will be approximately equal to one rad. The term is an abbreviation of roentgen equivalent, man.

Röntgen*. The roentgen* is the unit of radiological dose and is defined in terms of the amount of electric charge released by the ionisation caused by X or gamma rays. One roentgen corresponds to the release of 83.8 ergs of energy in a gram of air, so that it would take the energy of more than a million roentgens to warm a gram of air by 1°C.

Shield—Biological. A mass of absorbing material used to shield operating staff by reducing radiation to permissible levels. It is often of dense concrete, e.g. the biological shield round power station reactors can be 7 or 8 feet thickness of concrete.

Swimming Pool Reactor. A reactor using water as coolant and moderator usually ten or more feet deep so that the water is also a shield for the core which comprises sets of plates suspended deep into the pool, from above the water level. Often used for study of shielding problems, e.g. for marine reactors.

* The two spellings are given in the glossary; they are alternatives.

Uranium. Element No. 92, a heavy metal. U-235 is the only naturally occurring readily fissile isotope; U-238 is a fertile material; U-233 is a fissile material that can be produced by the neutron irradiation of thorium 232. Natural uranium contains 1 part in 140 of U-235.

X-ray. Penetrating radiations, being electromagnetic waves similar to light but of much shorter wavelength. Generally speaking they are emitted when high speed electrons suffer an abrupt loss of energy. Whilst invisible, they can be detected by photographic films, luminescent screens and instruments.

LEGAL FEATURES

In view of the special risks involved, legislation has been necessary, and the present position is summarised below.

Statute Law

Atomic Energy Act, 1946

This is an Act to provide for the development of atomic energy and to control such development. For this purpose the Minister of Supply was given wide powers.

The Minister has powers:

- (a) to produce use and dispose of atomic energy and to carry out research, and for this purpose he may manufacture, buy, acquire, store and transport any articles likely to be required (s.2);
- (b) to obtain information of materials, plant and processes with power of entry and inspection of premises (ss.4 and 5);
- (c) to search for and work minerals and acquire property, involving compulsory acquisition where necessary (ss.6-9).

Under s.10 the Minister may by order prohibit, except by licence granted by him, the working of any minerals specified in the order, and the acquisition, production, treatment, possession, use, disposal, export or import of prescribed substances, any specified minerals and any plant designed or adapted for the production or use of atomic energy or for research.

There are also special provisions as to inventions (s.12).

Radioactive Substances Act, 1948

This Act makes provision with respect to radioactive substances and certain apparatus producing radiation.

The Minister of Supply has power to manufacture or otherwise produce, buy or otherwise acquire, treat, store, transport and dispose of any radioactive substances, and to do all such things (including the erection of buildings and the execution of works) as appear to be necessary or expedient for the exercise of such powers (s.1).

He may also by order make such provisions as he thinks expedient for prohibiting or regulating the importation or exportation, or the carriage coastwise or the shipment of ships' stores, of all radioactive substances or those of any class or description specified in any such order (s.2).

No person is to sell or otherwise supply any substance which contains more than the prescribed quantity of a radioactive chemical element (whether natural or artificial) and is intended to be taken internally by, injected into or applied to a human being, unless that person is a duly qualified medical practitioner or a registered dental practitioner licensed under s.3 (or a person acting on the directions of any such practitioner) or the person is a registered pharmacist or an authorised seller of poisons and the substance is sold or supplied under the authority of a prescription by any such practitioner licensed as aforesaid (s.3).

No person is to use for the purposes of medical, surgical or dental treatment of human beings any irradiating apparatus of a prescribed class or description unless he is a duly qualified medical practitioner or a registered dental practitioner and is licensed under s.4 or is a person acting in accordance with the directions of any such practitioner (s.4).

Safety regulations for occupations involving radioactive substances and irradiating apparatus may be made by the Minister (s.5) and the Minister has powers to authorise entry and inspection of premises (s.7).

Atomic Energy Authority Act, 1954

This Act provided for the setting up of an Atomic Energy Authority to be known as the United Kingdom Atomic Energy Authority (s.1).

The functions of the Authority include power to produce, use and dispose of atomic energy and to carry out research (s.2).

The powers of the Lord President of the Council in relation to the Authority are contained in s.3 and the financial provisions as to the Authority are found in s.4.

Section 5 deals with the purchase of land and the carrying out of works. Subsection (3) is of special importance for the present purpose, and it reads as follows:

"It shall be the duty of the Authority to secure that no ionising radiations from anything on any premises occupied by them, or from any waste discharged (in whatever form) on or from any premises occupied by them, cause any hurt to any

person or any damage to any property, whether he or it is on any such premises or elsewhere."

This means that the Authority has a strict responsibility for the consequences of the escape from premises occupied by them of "ionising radiations." The expression "ionising radiations" may be taken to mean the same as radioactivity which can cause contamination, and the phrase "cause any hurt" is intended to be of wide interpretation.

Section 5(4) deals with waste discharged (in whatever form) on or from any premises occupied by the Authority. Section 7 provides for machinery for settling terms and conditions of employment of staff in the service of the Authority.

Atomic Energy Act, 1959

This Act increases from 10 to 15 the maximum number of members of the Atomic Energy Authority, excluding the chairman. It also makes provisions for the grant of pensions to the staff of the National Institute for Research in Nuclear Science and deals with expenses. This Act and the Atomic Energy and Radioactive Substances Acts, 1946-1954, may be cited together as the Atomic Energy and Radioactive Substances Acts, 1946-1959.

Nuclear Installations (Licensing and Insurance) Act, 1959

This Act, according to the preamble, is designed "to make provision for the regulation of certain installations capable of emitting ionising radiations and with respect to the incidence of, and the provision of cover for, liability in respect of any such radiations emitted from, or in connection with the use of, any such installation."

Nuclear Site Licences. Without prejudice to the requirements of any other Act, no person other than the United Kingdom Atomic Energy Authority is to use without a nuclear site licence—

- (a) any plant designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons; or
- (b) any other prescribed installation designed or adapted for—
 - (i) the production or use of atomic energy;
 - (ii) the carrying out of any process preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiations; or

- (iii) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter, being matter which has been produced or irradiated in the course of the production or use of nuclear fuel.

There are provisions for the revocation and surrender of licences, and in certain circumstances the applicant for a licence may be required to serve on a local authority and certain other bodies a notice that application for a licence has been made.

Licensee's Liability. Where a nuclear site licence has been granted it is to be the duty of the licensee to secure that no ionising radiations—

- (a) emitted during the period of the licensee's responsibility from anything caused or suffered by the licensee to be on the site or from any waste discharged (in whatever form) on or from the site; or
- (b) emitted from any irradiated nuclear fuel in the course of carriage on behalf of the licensee within, or between places within, the United Kingdom, being fuel which has become irradiated in the course of its use at the site

cause any hurt to any person or any damage to any property, whether that person or property is on the site or elsewhere. This liability does not apply where the emission is attributable to hostile action, and there are special limitations as regards transit under (b).

Liability is channelled so that no person other than the licensee is to be under any liability in respect of any hurt to any person or any damage to any property caused by any ionising radiations to which s.4(1) of the Act applies.

Notwithstanding anything in any other enactment, an action to establish a claim by virtue of s.4(1) may be commenced at any time before, but may not be commenced at any time after, the expiration of 30 years from the date of the occurrence which gave rise to the claim, or where the occurrence was a continuing one, the date of the last event in the course of that occurrence to which the claim relates. There are to be special provisions if the claim is not one within s.5(1)—see below—or is made more than 10 years after the occurrence date.

Provision of Cover for Liability. Section 5(1) provides that where a nuclear site licence has been granted the licensee is to make such provision, either by insurance or by some other means, as may be required, for sufficient funds to be available at all times to ensure that any claims in connection with the use

of the site in respect of any hurt to any person or any damage to any property caused by ionising radiations are satisfied up to an aggregate amount of £5,000,000 in respect of each severally of the following periods—

- (a) the current cover period, if any;
- (b) any cover period which ended less than 10 years before the time in question;
- (c) if a claim in respect of any earlier cover period made within 10 years of the relevant date remains to be disposed of, that earlier cover period;

and for the purposes of this section the cover period in respect of which any claim is to be treated as being made shall be that in which the relevant date aforesaid fell. "Cover period" means, with certain exceptions, the period of the licensee's responsibility.*

Other Provisions. Prescribed "dangerous occurrences" are to be reported and if this is not done severe penalties are provided. Inspectors are to be appointed to assist the Minister of Power in the execution of the Act. Section 9 deals with the liability of government departments and the Atomic Energy Authority in respect of nuclear installations.

Territorial Application. The Act extends to Northern Ireland, subject to the modifications of s.12, and by Order in Council the Act may be extended to any of the Channel Islands or to the Isle of Man, subject to such exceptions, adaptations and modifications as may be specified.

Radioactive Substances Act, 1960

This Act received the Royal Assent on 2nd June, 1960, and according to the preamble it is "An Act to regulate the keeping and use of radioactive material, and to make provision as to the disposal and accumulation of radioactive waste; and for purposes connected with the matters aforesaid."

Registration of Users of Radioactive Material. Section 1(1) provides that as from the appointed day no person shall—on any premises which are used for the purposes of an undertaking carried on by him—keep or use, or cause or permit to be kept or used, radioactive material of any description, knowing or having reasonable grounds for believing it to be radioactive material unless—

*The licensee is required only to make provision for the meeting of liabilities by one of the authorised means up to £5,000,000, and the Act provides that the licensee shall not be required to make any payment over £5,000,000 unless or until Parliament has made provision for him to be reimbursed.

- (a) he is registered under this section;
- (b) he is exempted from registration; or
- (c) the radioactive material consists of mobile radioactive apparatus for which a person is registered or exempted from registration under s.3.

Registration of Mobile Radioactive Apparatus. Section 3(1) provides that as from the appointed day no person shall keep, or cause or permit to be kept, mobile radioactive apparatus of any description for the purpose of its being used in the provision by him of services to which the section applies unless registered or exempted. Likewise, no person shall use, lend or let on hire, or cause or permit to be used, lent or let on hire, mobile radioactive apparatus of any description in the course of the provision by him of any such services unless registered or exempted.

The services for this purpose are defined in s.3(2) as "using mobile radioactive apparatus for testing, measuring or otherwise investigating any of the characteristics of substances or articles situated elsewhere than on premises occupied by the person providing the services" or "lending or letting on hire mobile radioactive apparatus for the purpose of its being so used."

Disposal of Radioactive Waste. As from the appointed day (s.6) no person shall dispose of any radioactive waste on or from any premises which are used for the purposes of an undertaking carried on by him except in accordance with an authorisation granted in that behalf under sub-s.6(1). Moreover, he must not cause or permit any radioactive waste to be so disposed of if (in any such case) he knows or has reasonable grounds for believing it to be radioactive waste without such authorisation. There are similar provisions about the disposal of waste from any mobile radioactive apparatus.

Accumulation of Radioactive Waste. It is also necessary to control the accumulation of radioactive waste with a view to its subsequent disposal, and an authorisation is required for this purpose as provided by s.8. If it appears to the Minister that adequate facilities are not available for the safe disposal or accumulation of radioactive waste, he may make the necessary arrangements (s.10).

Other Provisions. The Minister may appoint inspectors to assist him in the execution of the Act. They are to have rights of entry into premises at any reasonable time, and they can carry out tests on or off the premises. They can also require the occupier to give them information about the use of premises and may inspect documents relating thereto.

Severe penalties are provided for offences (s.13). The meaning of "radioactive material," "radioactive waste" and "mobile radioactive apparatus" is dealt with in s.18. There is an interpretation section and the "appointed day" is defined therein (s.19) as such day as Her Majesty may by Order in Council appoint. There are modifications in the application of the Act to Scotland, and to Northern Ireland.

THE FACTORIES (LUMINISING) SPECIAL REGULATIONS, 1947

These regulations, S.R. & O. 1947 No. 865, applicable to all factories where luminising is carried on, are made under s.60 of the Factories Act, 1937, and they naturally affect employees, but since they are the only regulations of their kind in existence they may be taken as a guide to the precautions which should be observed in relation to members of the public.

In special circumstances the Chief Inspector may issue an exemption certificate, but no occupier is permitted to undertake luminising after the commencement of the regulations without notice to the Inspector for the district.

No person under 18 years of age may be employed in the processes or in cleaning, and there are limitations on hours of work (48 hours in any one week) and continuity of employment. Exhaust draught and ventilating apparatus must be provided, and there is general control of working conditions. Brushes may not be used for the application of luminous compound. (In the early days workers sometimes licked brushes to bring the hairs together, with injurious results.) The disposal of waste material, the storage of luminous compound, the use of containers with lead lining, and the provision of washing facilities, protective clothing, medical examinations and tests of exposure to radiation are all required by the regulations.

New regulations are under consideration.

THE NUCLEAR INSTALLATIONS (DANGEROUS OCCURRENCES) REGULATIONS, 1960

These regulations (S.I.1960 No. 514) became operative on 1st April, 1960, and were made by the Minister of Power and the Secretary of State for Scotland acting jointly. The regulations prescribe for the purpose of s.6(1) of the Nuclear Installations (Licensing and Insurance) Act, 1959, the classes and descriptions of occurrences happening on, or in connection with the use of, a licensed site, which by virtue of s.6(2) of the Act

must be reported forthwith to the Minister. The manner in which such occurrences are to be reported is dealt with in regulation 4 which provides that certain classes of occurrence have to be reported to the chief officer of police and the local authority concerned, as well as to the Minister.

THE FACTORIES (IONISING RADIATIONS) SPECIAL REGULATIONS

A preliminary draft, circulated in 1957 for informed comment, related to a code of regulations to safeguard workers in industry against the effect of ionising radiations. Here again, employees are concerned, but the regulations will be a guide to the dangers and precautions which are desirable. In the light of comments received a second preliminary draft has been prepared, dated 1960.

Two main methods of protection are envisaged. The first is to encase the source of radiations and the work being irradiated in so thick an enclosure, or to prevent access to the source and the work from so great a distance, that persons outside the enclosure or beyond the distance cannot receive a dose above the maximum permissible level. This is termed "adequate shielding." But there are cases where it is not practicable to require shielding of such a standard, and the method of protection is then to shield the source and the work as much as possible and/or limit the time that any person spends in the field of relatively intense radiations so that, although the dose rate may be high, the total dose that that person receives is below the prescribed maximum permissible level. This is termed "adequate protection."

The draft regulations provide for general precautions, age limit, storage, tests of personal exposure, for medical supervision and examinations, for precautions relating to special processes. X-ray fluoroscopy and crystallography, and static eliminators and measuring and detecting devices are also dealt with in the draft.

REPORT: CONTROL OF HEALTH AND SAFETY IN THE U.K.A.E.A.

The Report of the Committee appointed by the Prime Minister to examine The Organisation for Control of Health and Safety in the United Kingdom Atomic Energy Authority (January, 1958 Cmnd. 342) is an informative document.

The report opens with some reference to the hazards of atomic energy and then details four steps which are required for safe technological practice. They are:

- “ (a) Formulating codes of practice for design and operation with numerical limits based on experimental facts and experience. In industry generally, a large amount of experience and data have been built up and normal practice is for this to be taken into account by the design engineers. The special problems of atomic energy require, however, that preparation of the codes should be the responsibility of specialist health and safety staff.
- (b) Designing plant using these codes of practice. This is the responsibility of the design engineers.
- (c) Operating and maintaining the plant to these codes. The executive responsibility for this rests with the Works General Manager and his operating staff.
- (d) Overall ‘monitoring’ of both design and operations by the safety staff. We define ‘monitoring’ in this connection as meaning thorough acts of examination and, if necessary, subsequent reporting to the executive authority of any condition of such a nature that the safety standards are not being maintained. The responsibility for action to maintain safety standards rests with the executive authority. The duty of the safety staff is to draw attention to any lapse from the prescribed codes.”

Responsibilities to the electricity authorities and industry, control of reactor siting and design, and general control of the Authority’s organisation are considered. There are also sections on industrial group health and safety organisation, research group health and safety organisation, and weapons group health and safety organisation.

Training in Radiological Health and Safety

The United Kingdom Atomic Energy Authority have set up a Committee under the chairmanship of Sir Douglas Veale to consider cognate questions of training in radiological health and safety. The Committee’s Report has been published (H.M.S.O. 5s. 6d.) and among the principal recommendations is one that a national radiological advisory service should be established.

RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE

In consequence of the passing of the Nuclear Installations (Licensing and Insurance) Act, 1959, insurers introduced a radioactive contamination exclusion clause into practically all material damage and third party new policies — other than

marine and aviation—on and from 1st April, 1960, with application to policies as and when renewed after that date.

The clause reads as follows:

"This Policy does not cover—

(a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss

(b) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any *nuclear fuel or from any nuclear waste from the combustion of nuclear fuel."

The reason for this clause lies in the fact that the licensee has a strict liability. It is the intention of the legislation that all claims should be channelled to him, he having in the terms of the Act to ensure that insurance or other cover is available to an amount of £5,000,000 (see p. 262). Accordingly, no one other than the operator of a reactor installation (in its widest interpretation) needs to have provided by his material damage or third party insurance policies any cover in respect of the radiation risk. In order to avoid the endless litigation of claim and counterclaim which might otherwise follow, the position concerning policies has been made clear beyond doubt.

Such a clause does not appear on policies issued to reactor operators, since their policies are designed specifically to take care of that particular risk.

The wording used excludes loss, destruction, damage or liability emanating from *nuclear fuel or from any nuclear waste from the combustion of nuclear fuel*. Insurers, therefore, remain responsible under their policies, unless they otherwise provide, for radioactive contamination proximately caused by the perils which they may be covering emanating from radioactive substances which are not fuel or waste products thereof. Hence, the clause will be seen not to exclude liabilities arising out of the use of radioisotopes.

DEVELOPMENT OF INSURANCE NEGOTIATIONS

It is never easy to trace the beginning of any section of insurance business because isolated policies are at times issued before a market for the business develops. Research has revealed that, although in 1914 the expression "radioisotope" had not at that time been introduced, insurances in respect of radium (which is itself a radioactive isotope) were then by no means

* The clause used in motor policies includes here the word "irradiated."

uncommon. Before World War No. 1 radium was used for the treatment of cancer in many of the larger hospitals, and the hospital authorities sought to insure it against "all risks" by reason of its considerable value. A list of insurances of this type dated 12th October, 1914, located at the "Alliance" Head Office, has shown that that office was then covering such risks at five hospitals. The correspondence refers to such insurances as having been accepted with comparative freedom "a few years ago" at a rate of approximately 10s.%. By 1914, however, the claims experience had proved so unsatisfactory by losses of the radioisotopes and not on account of third party claims that both the companies and Lloyd's underwriters trebled that rate. In 1928 the "Union" issued a prospectus and policy form for the insurance of radium. They prepared an endorsement wording setting out the rules to be observed as a condition of insurance, and such rules were adopted by many hospitals as their own "Radium Ward Rules" designed in the interests of all concerned to avoid losses of this valuable substance, then priced at £7 10s per milligramme. Even as late as 1928 emphasis was still on the insurance of loss rather than on liability.

The introduction of atomic reactors has been responsible for the production of radioisotopes on a substantial commercial scale. In consequence, within the last 10 or 15 years radioisotopes have been used in many industrial and other processes in this and other countries.

Early Negotiations

The problems which arose out of automatic fission and the liabilities arising therefrom began to engage the attention of insurers in the United Kingdom soon after the ending of World War No. 2. It appears that the subject was first raised in 1946 at a meeting of the International Union of Marine Insurers at Zurich, where the Danish representatives drew attention to the international problems involved, mainly from the standpoint of the use of atomic power for destructive purposes. The Fire Offices' Committee took notice of this and in that year set up a committee to investigate the problems.

In the years which immediately followed there was little opportunity for the public or, indeed, for industry generally to obtain much useful information about the hazards likely to be involved in the use of atomic energy. In November, 1953, however, Sir Christopher Hinton spoke in New York of the expected development of atomic power in the United Kingdom. It was then felt by insurers that the time had come for the

British insurance market actively to undertake an investigation into the insurance problems. An approach was therefore made to the United Kingdom Atomic Energy Authority and, as a result of this, a meeting took place in April, 1954, between Sir John Makins (then General Manager, "Commercial Union"), the Chairman and Deputy-Chairman of the Fire Offices' Committee, and Dr. W. G. Marley, of Harwell. In this way the first step was taken towards clarifying in the minds of insurers in the United Kingdom the nature of the hazards to be expected as a result of the development of atomic energy.

In 1953, Mr. W. H. Forster (Chief Engineer and Manager, "Insurance Engineers") was approached by the U.K.A.E.A. with a view to the insurance of auxiliary plant connected with experimental apparatus designed for use in projected atomic power stations for the like of which it was understood that industry might in the future require insurance. In May, 1954, Mr. Forster was invited to discuss with the U.K.A.E.A. certain insurance features of such power stations. As a result of this approach, Sir Edward Ferguson (Managing Director, "Phoenix") suggested in the following month the setting up of an informal insurance panel. This was done and comprised Mr. W. H. Forster, Mr. H. C. Brown (Manager, "Ocean" Engineering Department) and Mr. R. W. Musson (London Fire Manager, "Royal"). The panel recommended that the Associated Insurers (British Electricity) Management Committee, which was concerned with the insurance needs of the then Central Electricity Authority, should investigate the subject. The Authority, as the suppliers of electricity for the United Kingdom, was expected to be the first to operate power reactors.

Little progress was made in the immediately succeeding months, but on 10th January, 1955, Sir Edward Ferguson took the chair at a meeting of The Insurance Institute of London, when Mr. P. T. Fletcher, then Deputy-Director, Engineering Services, United Kingdom Atomic Energy Authority, Risley, delivered a lecture on "The Industrial Application of Atomic Energy." At an informal party after the lecture Sir Edward Ferguson explained to the lecturer the desire of the insurance market to prepare itself to play its full part in the approaching atomic age. A short time after this an invitation was received by Mr. J. W. J. Levien (then General Manager, "Atlas," and Chairman of the British Insurance Association) from Sir Christopher Hinton (who had heard of the interest of insurers also from Sir Edwin Plowden) for an insurance representative to serve on the Reactor Operations Panel of the U.K.A.E.A.

It was thought, however, that representation on the Panel would not enable insurers adequately to obtain a full appreciation of the hazards with which they might expect to be confronted in the future. After discussion, therefore, arrangements were concluded with the Authority whereby a committee of six, appointed by the British Insurance Association, would be enabled to inspect atomic plants in the United Kingdom and have conversations with the U.K.A.E.A. engineers and scientists engaged in the work to whom questions could be addressed and from whom replies could be obtained in non-scientific language, so that the committee members would be able to interpret to the insurance market the nature of the problems involved.

Atomic Energy Committee Formed

In October, 1955, a committee was set up by the British insurance companies (members of the British Insurance Association) and Lloyd's in order to make an intensive study of the insurance problems arising out of the industrial use of atomic energy, with particular reference to the new atomic power stations to be erected by the then Central Electricity Authority. In August, 1956, the committee was absorbed by the British Insurance (Atomic Energy) Committee, which was formed to consider the underwriting of reactor insurances by the British insurance market (companies and Lloyd's). The original committee became an Advisory Committee to that body. An interim report was issued in May, 1956, and a full report in April, 1957.

The report was divided into two parts (1) Atomic Energy and (2) Insurance, with Recommendations and Conclusions and an Appendix, which dealt with counsel's opinion. The report included recommendations for dealing with the new insurance problems of radioactive contamination and liability to third parties.

In the report the committee recommended to British insurers that "having made provision for the maximum possible cover to reactor owners for third party liabilities, insurers should agree:

- (a) to make clear, as soon as possible, that the risk of radioactive contamination arising from nuclear fission or nuclear fusion is not covered by any existing insurance or reinsurance covering property of any kind, or liability to third parties for property damage or personal injury; and
- (b) not to cover, on any terms, the risk of radioactive contamination arising from nuclear fission or nuclear fusion, by any future insurance or reinsurance covering

property of any kind, or liability to third parties for property damage or personal injury subject to certain exceptions." (Paragraph 129.)

The exceptions referred to were in respect of reactor installations, concerns engaged in the fabrication, processing and reprocessing of atomic fuel and risks arising from specific radioisotopes.

A close examination of the subject preceded these recommendations which contemplated the channelling of all liability for radioactive contamination to the reactor owner or operator without right of recourse against any other party. The conclusion had been reached that, in English law, it might be possible, in the event of a fire in, say, a nuclear installation causing the release of radioactivity, for the fire insurers to be held responsible for damage so occasioned to properties which they might insure against fire risks some way, possibly, from the installation. Many conflicting statements were current in different parts of the world as to the amount of damage which might be so caused. It was, therefore, hoped that legislatures might deal with the situation by, first of all, channelling all liability to reactor owners or operators, without right of recourse, which, indeed, it was intended to do in the United Kingdom and was effected by the Nuclear Installations (Licensing and Insurance) Act, 1959. However, the Act has imposed an absolute liability only in respect of the consequences of the release of ionising radiations and not, for example, in connection with explosion damage as such, arising internally or externally, if it should occur.

Reinforced by the terms of their domestic legislation, British insurers have been able to take steps to exclude from all policies covering damage to property of any kind and third party policies covering injury or damage to third parties, liability for the risk which has been placed upon the owner or operator who, in the terms of the legislation (see p. 262) is required either to insure or to make available reserves up to an amount of £5,000,000 in any one "cover period." The relevant clause—the Radioactive Contamination Exclusion Clause—is dealt with on page 266.

The majority of Continental countries have, during the past ten years, introduced atomic risks exclusion clauses into third party insurance contracts.

It is not intended to hamper the use of radioisotopes now so commonly in use in research, industry, medicine and agriculture. Indemnities in connection with radiation risks (other than those

arising from nuclear fuels and nuclear waste) are readily available.

Often, the use of radioisotopes does not, in the United Kingdom, require any addition to the premiums required for third party indemnities, but it is possible to conceive that sometimes third party insurers might, justifiably, consider an extra premium to be suitable in the light of the risk involved in a particular case (see Chapter XVIII).

International conferences have from time to time been held in London and elsewhere to consider common problems as they affect insurers arising out of the new risks associated with atomic energy. The United Kingdom has been represented at meetings of the O.E.E.C. and also those of the Comité Européen des Assurances.

At the second international Atomic Energy Insurance Conference held in London in February, 1958, pooling arrangements were agreed (see p. 285) to include third party liability for damage to property and loss of life and injury to persons arising out of the use of atomic installations, i.e., "atomic reactors and atomic power stations and plant or any other premises or facilities concerned with the production of atomic energy or any process incidental thereto."

Part Played by Insurers

It is here relevant to state that the insurance market has made a major contribution to industrial atomic development, particularly in the engineering insurance field, and thus indirectly to the reduction of third party risks arising out of this new power. The engineering insurance offices, with their specialised knowledge of pressure vessels and of metallurgy generally, have given freely of their knowledge and experience. The "National Boiler" was engaged in 1952 on an essential part of the preliminary studies undertaken before the construction of Calder Hall. Indeed, many persons and companies other than those mentioned above have played their part in recent developments.

At the beginning of 1956 the "Alliance" issued what is believed to have been the first printed prospectus relating specifically to the insurance against "all risks" of radioisotopes and their containers or applicators, together with third party insurance in respect of the risks arising out of their installation, use, storage and transport.

CHAPTER XVII

THIRD PARTY INSURANCE FOR REACTORS

If a reactor is to operate safely, it must be governed by efficient and effective controls. Equally, the controls, which may not always be automatic, must be operated by employees. The human element thus present may cause an accident. A control may be removed accidentally as an instruction may be misunderstood so that a reactor runs away. If a runaway occurs then, notwithstanding the policy of containment followed by the designers, the shell of the reactor may give way and allow dangerous fission products in the form perhaps of gases or dusts to escape into the atmosphere or of liquids into streams or sewers in such quantities that very serious injury may be caused to life and property over a wide area. The extent of the damage will depend on the siting of the reactor (preferably remote from any material centre of population), the meteorological conditions prevailing at the time, and many other factors. At the best, the amount of radioactivity released may be small and dispersed by the wind over an unpopulated area with the liability limited to compensation payments for injury to animals and possibly for inability to use land and buildings until the radioactivity has diminished sufficiently. This may take a long time. At the worst, the volume of radioactivity emitted may be such as to cause injury to many persons domiciled some distance from the reactor; to render the land and buildings in the neighbourhood uninhabitable for a long time, with the added danger of radioactivity leaking through the affected ground to contaminate the water in streams which may, in turn, affect food production and industry far away from the reactor. There is every reason to think that a disaster of this kind is unlikely, but naturally reactor owners require very substantial limits of indemnity.

A situation commonly known as that of melt or runaway is one most likely to give rise to a serious third party liability, since it may be accompanied by the escape of a substantial volume of fission products in the form of gas, dust or possibly liquid waste products. A melt is said to have occurred when for some reason or other a solid fuel reactor passes beyond control. There is then a very rapid rise of temperature which results in the fusing of the fuel elements (for example, uranium) so that the fuel can

no longer be withdrawn. In this event, unless and until science of controlled entry proceeds beyond its present state, the reactor might, in the worst possible circumstances, have to be abandoned. It is to be expected that in so far as an abandoned reactor might remain a source of danger for many years, provision for third party claims, by insurance or otherwise, might have to be maintained by the licensees indefinitely.

No one foresees any possibility of early profit from the writing of reactor third party risks because the sums involved are large and an absence of claims even for ten years does not mean that the premiums accumulated from this source can safely be regarded as profit since, with the limited number of reactors to be insured, premiums will need to be kept in hand for what must in prudence be regarded as the inevitable loss at some unknown future date. Moreover, such reserved premiums must be available for transfer to any part of the world where such an accident may occur.

KINDS OF REACTORS

The basic forms of reactor are as follows:

(a) **Graphite moderated, gas cooled.** The Calder Hall atomic reactors are of this type, which has been adopted by the Electricity Authorities in the United Kingdom for the initial stages of their atomic power production programmes. This type of atomic reactor—using atomic fuel suitably canned, the canning itself being a protection and form of containment—has many inbuilt safety features, and is described by the United Kingdom Atomic Energy Authority as inherently safe in that it is considered that any runaway would be halted by the reduction in activity which results from a rise in temperature. Even in the unlikely event of an overshoot of temperature (i.e., a runaway) the containing vessels of atomic reactors of this type which will be built in the United Kingdom will be strong enough to make a fracture, resulting in the emission of fission products, difficult to imagine.

(b) **Pressurised water.** A slightly enriched uranium core is used, and ordinary water acts both as coolant and moderator. The reactor is designed to prevent the boiling of the water coolant within the core. The reactor vessel is, therefore, under very considerable pressure.

(c) **Boiling water.** Here again ordinary water is used both as coolant and moderator. The core is of slightly enriched uranium. Steam is formed in the reactor vessel itself and passes

direct to the steam plant or to a heat exchanger. If the steam leaving the reactor passes direct to a steam plant it needs to be shielded.

(d) **Sodium graphite.** Graphite is used as a moderator and liquid sodium as a coolant. The necessity of a high pressure is avoided while permitting high coolant temperatures. Heat from the liquid sodium is transferred through an intermediate heat exchanger, usually to another liquid metal (liquid sodium potassium alloy) which removes the heat.

(e) **Fast breeder.** This type of atomic reactor employs no moderator, but uses fissile material as a fuel and is cooled by liquid metal. The core is surrounded by an outer blanket of fertile material which is converted by excess neutron emission of the core into fission material. Like the sodium graphite reactor, the fast breeder reactor, when used in an atomic power installation, must use an intermediate heat exchanger and two coolant circuits.

(f) **Homogeneous.** In this type of atomic reactor the fissionable material, or fuel, is carried in a liquid. Sulphate of uranium dissolved in ordinary or heavy water, oxide of uranium as a slurry in water, or a solution of uranium in liquid bismuth are all usable combinations. It is considered possible to be able to withdraw a proportion of the solution from which fission products could be eliminated to form a supply of fresh fuel for injection as further fuel is withdrawn for processing.

The first reactor in the United Kingdom was the research reactor at Harwell in 1947 and this and other reactors are under the control of the United Kingdom Atomic Energy Authority which does not insure. The Electricity Authorities, however, propose to build a number of atomic power stations in the next few years, and private reactors may be used in industry, at universities and colleges of advanced technology.

REACTOR ACCIDENTS

The following are some of the accidents known to have occurred since 1945:

<i>Date</i>	<i>Place</i>	<i>Cause</i>	<i>Result</i>
December, 1952	Chalk River Canada	Human and mechanical errors	One in ten of the fuel elements melted. The reactor was dismantled, decontaminated and reconstructed; it was in use again after 14 months. No one was hurt or exposed to dangerous degrees of radioactivity.

<i>Date</i>	<i>Place</i>	<i>Cause</i>	<i>Result</i>
February, 1954	"Godiva," Los Alamos, New Mexico	Mechanical failure	An unexpectedly large prompt-critical burst.
November, 1955	Arco, Idaho, U.S.A.	Human error; employee pressed the wrong button	Control of the uranium got out of hand; the central core and inside shell of its container vessel were badly damaged. No one was hurt or dangerously exposed.
June, 1956	Saclay, France	Fuel element and can failure	The casing enclosing one of the uranium fuel rods split and released a quantity of radioactive ash up the chimney; operation held up for a short time while the broken fuel element was removed and repairs done.
July, 1954	Argonne, Idaho U.S.A.	Deliberate for experiment	The reactor was made to "run away"; there was a mild explosion and no appreciable radioactive fallout more than a few hundred feet away.
February, 1957	'Godiva,' Los Alamos, New Mexico	Mechanical failure	Nuclear power surge much higher than expected level; power unit destroyed but no one hurt and no building damage.
October, 1957	Windscale Pile No. 1, Cumberland	Mechanical failure	Overheating with radioactive gas released through the chimney on to the surrounding countryside. Compensation was paid to farmers for loss of sale of milk.
May, 1958	Chalk River, Canada	Mechanical failure	A red-hot rod was withdrawn. It burst into flames and contaminated the reactor room.
October, 1958	Vinca, Yugoslavia	Runaway	One person killed and five injured, four of them suffering serious bone disease.
February, 1959	Marcoule, France	Explosion	One person killed.
November, 1959	Oak Ridge, U.S.A.	Explosion	The reactor and environs had to be decontaminated and 250 persons were examined.
April, 1960	Waltz Mill, U.S.A.	Broken fuel element	Premises had to be decontaminated.
June, 1960	Chemistry Institute, Rechife, Brazil	Students' errors	Building evacuated and a number of persons will be affected in various ways, because the reactor was transported on a lorry which was subsequently used to carry food.

MAIN SOURCES OF HAZARD

An incident could conceivably occur which created negligible damage to the property of the reactor operator himself while creating a third party liability outside the premises. For example, a reactor designed to operate with a highly active cooling circuit might suffer a breach both of a coolant pipe and of the containing jacket, at approximately the same time, thereby releasing activity without seriously damaging the reactor itself. Conversely, a reactor might be completely demolished internally by the oxidation or melting of the core without any external repercussions whatever; though in such a case it would need good fortune as well as good design for a third party incident not to take place at the same time.

The hazards which might possibly occur can be listed as follows:

- (i) An unusual and possibly uncontrolled rise in the rate of nuclear heat release. This is in the latter instance termed a nuclear runaway.
- (ii) Non-nuclear overheating.
- (iii) Loss of coolant.
- (iv) Breach of containment.

Each of these in turn is considered below.

(1) Nuclear Overheating

It would be possible for an unusual rise in the rate of nuclear heating to occur in consequence of the insertion of excess fissile material (by movement of part of the reflector) or through a change in the operation of the reactor, such as the disappearance of a poison or absorber or an alteration in the temperature of the moderator. Where there is a highly compact core, as in the fast reactor, there is even the risk that adjacent fuel elements will come too close together and thereby cause an increase of reactivity. In any of these circumstances a sharp rise in the rate of nuclear heating might be caused and that would be suspended only when the effect of temperature or the insertion of control rods had absorbed the excess of reactivity. The result would be that there would be a transient rise in the core temperatures which might damage the reactor and also breach the containment.

Provision for protection against such eventualities is made by the fitting of relays for the immediate operation and control of safety rods, thereby quenching the nuclear reactor. Such relays, as a rule, are associated both with the rate of nuclear heating and with the coolant and moderator temperatures. It is a

common necessity to all reactors that these relays should not fail and that, if they did, then the reactor must automatically shut down. There must be sufficiently strict technical management to prevent tampering with the safety circuits, and it may even be desirable that they be periodically inspected.

There are several methods of control in use, for example, by the use of different mechanical systems, by different absorbers, or by the relative movement of moderator or fuel. Reactors also differ in the amount of space within the core which is available for control or safety rods, and in the amount of reactivity to be controlled. A more highly rated reactor suffers greater variations in fission-product poison and thus needs a wider range of control than one which is lower rated. In consequence, in small reactors of high rating more reliance has to be placed on individual control rods. It is then essential that there be rapid insertion into the core in the event of an emergency and it may be necessary to hasten the gravitational fall of the rods by the use of an ancillary mechanism.

Naturally, the control mechanism can be permitted to move rapidly only when the reactivity is being diminished. The normal practice is to limit the rate of movement in the other direction in order to ensure that an undue rate of rise of power cannot occur accidentally. It is also possible for there to be special features interfering with the function of the control rods, such as a sharp dislocation of the reactor core as a result of an earthquake shock. In such circumstances, the insurer will expect to see that the measures available are adequate to meet such a contingency.

(2) Non-nuclear Overheating

Under transient or abnormal behaviour there might be conditions when materials of the reactor would exhibit heat release by reason of oxidation or through the operation of other causes. Detailed chemical and metallurgical examination must then be necessary in order to assess the extent of these effects. For example, it is known that magnesium cans burn in CO₂ above 650°C., and that hydrogen formed by dissociation in a water reactor may ignite at lower temperatures still; also, that at about 1,000°C. zirconium cans give out considerable heat in the presence of steam. It follows that a strict limit is set to the transients which can be tolerated in the reactor.

(3) Loss of Coolant

Certain of the secondary effects of nuclear or non-nuclear

heating could also be caused by loss of coolant. A hole or fracture might occur in the primary circuit by reason of corrosion, brittle fracture, creep or even external causes, resulting in the disappearance of the coolant. This can in some reactors be overcome by good design, for example, most of the coolant may be retained by quick-acting valves serving to seal off the affected part of the pressure circuit. Where the coolant is completely lost, the residual activity of the decaying fission products within the burnt fuel creates a hazard known as the "after heat" hazard.

This "after heat" is proportional to the rate of heating immediately before shut-down. It follows that in a highly-rated reactor there is considerable "after heat" and if there were complete absence of coolant there might be only a few seconds before the fuel began to oxidise or to melt. However, circulators can be given sufficient inertia, particularly in gas-cooled reactors, to cover the time immediately following shut-down when the "after heat" is at its highest, and later this heat can be controlled by natural convection.

A partial or complete failure of the circulators can also cause the coolant to be effectively lost. An insurance surveyor must confirm that adequate stand-by power supplies are available for both this and other essential purposes.

A reactor may be sited in a completely leakproof pit which is already filled with water, and this is one of the ways in which a reactor can be designed to ensure that loss of coolant is always unimportant.

(4) Breach of Containment

The primary containment of fission products lies in the sheath of the fuel element, except in reactors such as the homogeneous aqueous reactor in which the majority or all of the fission products are deliberately permitted to enter the cooling circuit. As a rule, the sheath is designed with sufficient strength to withstand the maximum expected burn-up, but the can may be liable to weakness, especially near the end of the lifetime of the fuel element. Such failure in the can may cause immediate fission product contamination of the coolant circuit and an occurrence of this type is monitored in the majority of reactors to greater or lesser degrees of sensitivity by the use of detection gear. Naturally, if there were widespread failure of fuel element cans there would be an appreciable release of activity into the primary circuit and this might necessitate major work on the reactor system. By way of illustration, the

contamination might prevent inspection or maintenance of heat exchangers or circulators. The amount of this activity is proportional to the total heat power of the reactor, but from the standpoint of the third party risk the quantity of long-lived fission is proportional to the total burn-up.

The activity would still be confined within the primary circuit even if the fuel element cans had failed. Breaches of this circuit have been discussed already and there is also the possibility that the activity might escape through the safety valves. It is therefore important that these should be adequately contained, or fitted with filters, in order to stop both gaseous and particulate fission products, and to operate under both normal and abnormal conditions.

In some reactors there is a further degree of containment by means of an over-all pressure-tight building. The doors or ventilators of such a building must be suitably controlled, possibly by reactor fuel temperature trips, and the containing building must be designed to withstand every foreseeable strain by over-pressure or under-pressure. There is also the risk of operational negligence in which the system, although of an almost foolproof technical design, fails by reason of continued mistreatment. Examples include the failure of fuel elements through unnecessary or too rapid thermal cycling, the failure of control rod mechanisms through lack of care in maintenance, the failure to control water purities at levels inhibiting corrosion, and the misuse of experimental channels within the reactor to give an unexpected increase of reactivity. Any such hazards are specific to particular reactors, but when making an evaluation of hazards it is nevertheless essential that these features be taken into account.

INSURANCE ARRANGEMENTS

In Chapter XVI a summary is given of the legal liability of nuclear reactor operators in the United Kingdom and that summary shows the problem with which insurers are faced in this respect. The difficulty of the problem is accentuated because there is an almost complete absence of insurance experience of reactor risks and of the potential if improbable consequences of a nuclear incident, particularly with plant which has built up a considerable inventory of fission products. The United Kingdom has of necessity already had to face the problem, and the situation for insurers and, indeed, for the operator who prefers to provide financial security by some means other than insurance, has been materially assisted by the

Nuclear Installations (Licensing and Insurance) Act, 1959. Later in this chapter an explanation will be given of the technical method by which the insurance capacity required has been achieved.

In view of legislative insurance requirements for nuclear reactors, it has been necessary to prepare a new type of policy (see page 292) by reason of the fact that the 1959 Act has required only the risk of hurt to persons or property by reason of ionising radiation to be covered compulsorily either by insurance or by other approved means. In such circumstances, insurers have generally drafted their contracts—for practical reasons conveniently embracing both the nuclear and conventional liability cover under the one document—in such a way as to comply with the law and to give, in addition, the normal cover. In order to comply with the Act the operator, if he insures, must have cover up to £5,000,000 for hurt or damage caused by the escape of ionising radiations whether to third parties or to his employees. He is free, however, to insure the conventional risks or not and if he elects to insure the latter risks he must decide for what sum cover is to be arranged. Liability for radioactive contamination alone, however, is not freely insurable. When insurers in the United Kingdom set themselves the task of drafting a policy to satisfy these requirements, it became clear that two contracts would need to be written as one. The reason for this is that many of the conditions of the normal policy could not be made applicable to the compulsory cover.

Insurers, by the first part of the contract, undertake to indemnify the operator against any liability at law which he may incur by reason of the appropriate section of the Act during any period for which the insurance is in force. The exceptions to the cover—not otherwise qualified, apart from the limit of £5,000,000 during the whole currency of the contract—constitute the exclusion of:

- (a) such claims as fall in whole or in part to be borne by the State when the limit of £5,000,000 is exceeded;
- (b) such claims made more than ten years after the date of the occurrence;
- (c) such claims which are otherwise incurred by reason of the operation of the Road Traffic Act.

The second part of the contract, which relates to cover for the non-nuclear third party risks (those arising other than out of the escape of ionising radiations), calls for no special comment, except that it is under this section that claims for concussion damage as the result of an explosion would have to be

met. The reason for this is that the first part of the contract is in view of the law limited to an indemnity for the consequences of the escape of ionising radiations.

Warranties are included in the policy to the effect that there shall not be:

- (a) any change in the design, specification or use of the nuclear installation, and
- (b) any alteration in the code of practice for its safe operation

unless agreed by the insurers.

Provision is also made by warranty that the operator shall take all reasonable steps to maintain a system of monitoring the level of radioactivity and that he shall maintain accurate records of such monitoring, with the records open to inspection by the insurers. Moreover, the operator is required to undertake all inspection work which the authorities or the insurers stipulate and promptly to remedy any defects discovered.

Products Liability Insurance

Products liability insurance is now required by manufacturers generally against the risk of liability to third parties by reason of negligence in the manufacture of completed articles or of parts supplied. In the absence of legislation it would be possible to foresee an operator of a nuclear reactor being involved in serious liabilities for an escape of ionising radiations causing injury to third parties through some mistake or other fault on the part of the manufacturer or supplier of parts. In the United Kingdom the operator is strictly responsible without a right of recourse against any other party for the consequences of the escape of ionising radiations, so that any manufacturer or supplier does not find himself faced with claims to an unspecified amount possibly some long time after a reactor may have been completed. Unless a system of channelling of liability to the operator is in force on these lines (as in the United Kingdom) the manufacturer or supplier may require protection for a very large amount. Even if the liability of an operator is limited in amount and in time (as in international conventions), unless there is no right of recourse against suppliers a serious problem of creation of liabilities arises for insurers who may be required to provide substantial indemnities for many parties who may be called into account in the event of a catastrophe. The reader should bear in mind that even if there is no right of recourse there remains the problem for the manufacturer or supplier that, since he has failed to secure what is considered

to be adequate compensation in one country, a claimant may raise an action against such of the parties as may have assets elsewhere in order to recover more. This is a serious problem for suppliers of reactor parts situated in countries where limiting legislation may not yet be in force.

Requests have frequently been made to insurers for the provision of indemnity in such circumstances on a wide territorial basis and means have been devised to satisfy this demand. In consequence, policies are now available (see page 297) to cover this risk but, as a rule, they are made subject to the exclusion of:

- (a) damage to the reactor itself when the policyholder is a reactor manufacturer, because this is a risk which the manufacturer should be prepared to shoulder himself. It is not always practicable, or indeed reasonable, to exclude this risk for a supplier of parts.
- (b) risks of liability arising from faulty, improper or inadequate design or specification. Here liability will generally rest upon the manufacturer who must be expected to be responsible for his own mistake in judgment in this respect.
- (c) manufacturer's liability arising in connection with a specified reactor when that reactor ceases to be insured in such a way that the insurers can keep in touch with its operation.

"Hold harmless" agreements are sought by the majority of manufacturers between themselves and those for whom they construct reactors. Despite care taken in drafting agreements, however, there is frequently doubt as to their ultimate value. Where, after injury, a claim is made against the operator it may well be that by reason of such an agreement the operator will be bound to meet the claim and not to exercise any right of recourse which he might otherwise have. Nevertheless, there remains the possibility that if a third party should be aware that his injury was caused by the fault or negligence of the supplier, then he may proceed directly against him. Such a "hold harmless" agreement may still be effective, but what is then to be the position if there should be a major catastrophe when the whole of the claims exceed the sum to which the operator's liability is limited by the legislation of the country concerned? It may well be asked if the supplier would then be able to recover under his agreement. The supplier of a complete reactor should, in practice, consider the desirability of requiring the operator to make him (as manufacturer) a party to his

insurance contract, where there is one. With this arranged, the supplier may still consider it desirable to seek further cover under a products liability indemnity designed to protect him after the basic policy has been exhausted if claims should be made against him outside the country of installation.

The supplier of parts, as opposed to a whole reactor, has the further problem that he cannot always ensure that his liability is covered by an insurance effected by the operator. He may not even know in which reactors parts which he has supplied may be used. In such circumstances, his best course is to arrange a products liability indemnity to provide protection against claims which may be made against him from any source. It is essential that such an insurance be effected on a wide territorial basis through one or more of the pools willing to accept risks in the territories in which his products may be used.

ASSESSMENT OF HAZARDS: FACTORS INVOLVED

The following factors have to be taken into account by insurers in any evaluation of reactor hazards so far as regards third party (or any other) risks:

- (a) **Type of reactor**, such as:
 - (i) gas-cooled graphite-moderated;
 - (ii) pressurised water;
 - (iii) gas-cooled heavy water moderated;
 - (iv) heavy-water-cooled and moderated, unpressurised;
 - (v) high temperature gas-cooled reactor;
 - (vi) fast reactor.
- (b) **Thermal power in megawatts.** This satisfactorily reflects the size of fission product inventory, which is a source of hazard for third party (and material damage) risks.
- (c) **Use**, such as:
 - (i) power production;
 - (ii) educational demonstration;
 - (iii) industrial use;
 - (iv) research and testing;
 - (v) experimental.
- (d) **Engineering assessment.** It is possible to make comparative assessment of the engineering and technological aspects of a reactor as regards design and construction and, later, as regards the proposed standards of operation and maintenance. By way of illustration, the following must be examined:
 - (i) the main components of the reactor and its cooling circuits; the inherent strength of the system in

- resisting corrosion, thermal and mechanical stresses, particularly at points of vulnerability;
- (ii) the fuel element design, with special reference to the limiting conditions for the retention of fission products;
 - (iii) the operating conditions; fuel enrichments, neutron fluxes, temperatures, pressures, coolant purity and the like, and shut-down heat;
 - (iv) the methods of control and inspection, including automatic trips and the detection of faulty cartridges;
 - (v) the reactor transient characteristics;
 - (vi) the events likely to lead to excessive fuel element temperature and procedures for overcoming them, for example, loss or partial loss of coolant, sudden addition of reactivity or failure of control mechanism, Wigner heating and chemical reactions;
 - (vii) the methods of containing fission products released by the fuel elements under extreme conditions; limiting conditions for the leak-tightness of the pressure vessel, primary coolant circuit and containing building (if any), including the performance of filters.
- (e) **Special features**, such as:
- (i) quality, experience and training of operating staff;
 - (ii) liability to earthquake;
 - (iii) liability to flood;
 - (iv) other relevant features of the reactor location.

INSURANCE POOLS

In the United Kingdom, as noted already, third party liabilities are limited by law to £5,000,000, which is well within the capacity of the British insurance market. In other countries, however, with smaller insurance markets it might not be possible to make provision up to such a figure without outside assistance. Even in the United Kingdom, insurers must take into account, in addition to the £5,000,000 figure, any sums for which they might be committed by way of material damage insurance on the reactor itself and the installation generally, as well as other property owned by the reactor operator in the vicinity. A reactor installation of the original Calder Hall type, for example—comprising two reactors and a power production

plant—might be worth something in the region of £30,000,000, and while £30,000,000 is a sum which can readily be insured in the British insurance market when only the conventional perils are concerned, the position is different with nuclear risks. There is in such circumstances the possibility of a very considerable maximum loss and with a total loss there might also be a maximum third party loss up to £5,000,000. This made reinsurance in the usual sense impracticable. Reactor risks are not yet accepted by all insurers as other than hazardous from the insurance standpoint and if the usual methods of reinsurance were adopted there might be exchanges of business to such an extent that any one insurer or reinsurer (and this is especially true of professional reinsurers) would find it impossible to determine his precise commitments. There would be a danger that too large a proportion of the whole would find its way to the relatively few professional reinsurers who could be unfairly involved in the event of a catastrophe.

In these circumstances, insurers came to the conclusion that it would be necessary to set up a system of pooling to embrace third party and other risks. In the United Kingdom the British Insurance (Atomic Energy) Committee represents all insurers—company and Lloyd's underwriters alike—and each insurer has intimated to the Committee the maximum sum for which he is willing to be interested for these risks under each heading, without any possibility of reinsurance as between one insurer and another. This means that the lines written are net lines.

On behalf of the whole market the Committee has studied the problems and has set up a rating and acceptance organisation which is empowered to commit all its members, to settle the terms of policies, and to issue them on behalf of all. The Committee alone has power to reinsure, if need be, on behalf of all, generally with the corresponding pools in other countries if they are willing to accept a part of a risk which it is desired to reinsure. It would also be possible to make arrangements with professional reinsurers who are not members of a particular pool. However, all parties at all times are in this way able to keep their acceptances within known and manageable limits.

The system is working well and there has been extremely friendly co-operation between the United Kingdom organisation and corresponding European organisations. There have been several international conferences held in London in order to explore difficulties common to all the European pools in setting up and operating such an unusual method of doing business.

The system has operated so well that it may be expected to continue until such time as reactor knowledge and experience have been built up to such an extent that insurers feel that the risks are so well understood and accepted as to render this special method unnecessary.

Similar pools have been set up in the United States of America, Canada and most European countries. Many British insurers participate in these pools by direct membership, and in many instances by reinsurance also between the pools. Each insurer, however, at all times keeps control of his liabilities.

When the premium to be charged for a third party indemnity is considered, all the factors which make up the engineering assessment are taken into account for third party indemnity purposes. The first consideration is naturally the inherent safety of the installation, but from the third party standpoint other factors must be considered. These further factors may be briefly stated as an assessment of the possible consequences to third parties in the event of an accident, despite all the care which may have been given to the safety of the installation so far as regards its design, construction and management.

The principal factors are:

- (a) Factors which affect the site of the reactor, for example:
 - (i) distribution of population in the immediate vicinity, so that information would be required as to the population density within one, two, five and ten miles of the site;
 - (ii) examination of the nature and use of land and property thereon within the same areas;
(Under (i) and (ii) particular attention would be given to the nearness of cities, towns and villages, and in country districts the situation of schools might be important.)
 - (iii) meteorological details, such as prevailing winds and rainfall, and any special factors such as the possibility of windstorms, tornadoes, typhoons, tidal waves or earthquake;
 - (iv) the proximity of the sea, or rivers and canals, reservoirs and watersheds;
 - (v) storage of fuel, whether irradiated or not, with special attention given to the former.
- (b) Factors which affect the operation of the reactor, for example:
 - (i) the qualifications of those in charge and the probability that the standards will be maintained.

There may be some concern for fear that a sufficient supply of the right type of operatives may not continue to be available in the light of the probable demand for them as more reactors are constructed;

(ii) the code of practice already taken into account under the engineering assessment, such as the standards of control by multiplication of safety devices, monitoring in the immediate neighbourhood and more distantly, and methods of alarm, as well as the determined procedures to be adopted in the event of an incident.

(c) The hazards associated with waste products:

- (i) their storage;
- (ii) their disposal.

(d) Other factors, such as political stability of the area in which the reactor is situated and the possibility of labour or other disturbances. (The consequences of war would not be covered by any insurance.)

The various features brought out by an examination on the lines indicated must be recorded and evaluated in such a way as to give a reasonable relationship in the light of the relative hazards involved as between one proposition and another.

CLAIMS

The settlement of public liability claims likely to arise out of the use of reactors will, in the main, follow the practice of those which occur in any other industry. Nevertheless, the operation of a reactor, with the creation of the hazard of radioactive contamination, will give rise to a number of new problems. Some of these will, in turn, pose entirely new problems for insurers. The tendency is to think only in terms of catastrophic accidents by reason of the use of reactors, but it cannot be stated too frequently that the possibility of a catastrophe, although it exists, is very much reduced by the built-in safeguards to be found in every type of reactor. These, indeed, are insisted upon by governments whose function it is generally to approve the design and method of operation of any such installation.

Ordinary Accidents

By ordinary accidents is meant those that might occur apart from a catastrophe or even minor explosions amounting to very much less than a catastrophe. On the occurrence of an ordinary accident there may be an escape of radioactivity which may

affect those working round about (who, if employees of the operator, are not third parties), including the employees of contractors engaged upon the premises who will be third parties so far as the operator is concerned.

If it should happen that no exposure record, by means of sensitized badges or otherwise, has been maintained for each such person, then it is conceivable that there may be considerable difficulties in any claim which may follow exposure. Presumably, if the exposure is serious, the effects may be evident soon after the happening of the incident, but after even controlled exposure has taken place over a very long period, there may be difficulty in determining at what point the exposure became accidental or unintentional. Moreover, there can be the complications created by the time factor, in the sense that if an injury or, indeed, an illness becomes manifest some years after an event, it may be difficult for the claimant to bring together sufficiently convincing evidence as to when and how he sustained the injury concerned. As time goes on, methods of dealing with problems of this kind will doubtless be found, but for the present difficulties may well exist.

Serious Claims

In a consideration of the more serious claims which may arise out of the operation of nuclear reactors, an effort must be made to visualise the circumstances in the event of a catastrophe. A catastrophe could exist when, by an accident after something had gone wrong inside the reactor, there was a fracture in the outer casing which permitted the escape of radioactive fission products into the atmosphere in the form of gases or dusts or into the rivers or streams if liquids were concerned. If gases or dusts were involved these might likewise contaminate watersheds or water courses round about, provided a sufficient quantity of the radioactive substances had in some way or other been distributed. Damage could be spread over a considerable area.

Bodily Injuries

The first consideration would be the removal of persons from the affected area. This is not likely to be the function of insurers, since it is to be expected that only governmental or local authorities would be able effectively to handle such arrangements. Indeed, they would seem to be the only parties likely to have powers to do so. It is also foreseen that regulations which will be made under the provisions of the Nuclear Installations (Licensing and Insurance) Act, 1959, will require the local authorities in such an eventuality to keep records of

those known to have been in an affected area. This should be helpful in the event of claims made by or on behalf of persons who allege that they have been affected.

One of the problems will be proof of the relationship between the illness or disability alleged to have been due to a nuclear incident and the occurrence, since many of the illnesses and disabilities frequently associated with radiation exposure are such as to be common to the human race in the absence of exposure to radioactive contamination. It is possible that, in due course, where a claimant can show that he has been exposed on the happening of a reactor incident, the courts will take the view that in the event of certain forms of illnesses manifesting themselves there is some kind of presumption that the disability was due to exposure to radiation. Nevertheless, claimants may not always find it easy to produce that degree of proof which the law requires if another party is to be held responsible for the consequences alleged to have arisen out of any such occurrence.

Property Damage

Claims following radioactive contamination of property may bring entirely different problems. Such contamination as regards buildings may cause doubt as to whether there has, in fact, been damage caused. Physically, the buildings may appear to be just as they were before the incident, and the basis of the claim, therefore, will not necessarily be one of damage but, possibly, denial of access and use. According to the type of contamination (dependent on which fission products have escaped, for example, at Windscale it was radioactive iodine), so the period of inability to use the premises may be longer or shorter, because some radioactive substances decay much more quickly than others. With long life fission products loss of use expressed in time may not be the only factor; the expense of decontamination may also have to be met.

Land affected by radioactive contamination so that it cannot be used, for example, for the production of food, may need to be ploughed, with the possible loss of the current crop, which may be grain or grass. The land may remain unusable until frequent ploughing and rain have reduced the radiation to a safe level. Such costs, dependent on time and labour, may all rank in the claim.

Animals may equally be affected. As with the Windscale incident, it may be necessary to destroy food products, such as milk, and to defer killing sheep or cattle until they are again

safe for use as food, with possible loss in the meantime or favourable markets.

Cost of Claims

No one has yet attempted to assess in detail the financial possibilities of claims following an incident affecting a large area. It is apparent that there could be a considerable accumulation of claims for injury to persons and also for damage or alleged damage to their property, including land and animals.

As has been seen, claims might also be made for loss of use of buildings and land through denial of access. It might be necessary to meet the cost of alternative accommodation for families, and to deal with claims for loss of use of private and business premises as well as farm land. Loss of profits through denial of access to business and other premises might also be the subject of claims. It is even possible to imagine substantial claims through a watershed having been affected in such a way that the water supply to a large city could not be used and heavy expense might have to be incurred in making alternative supplies available.

Other Features

Throughout this chapter reference has been made to third party claims. In so far as those claims relate only to radioactive contamination caused to persons, it must be borne in mind that where the reactor operator is concerned his employees are in the same position as ordinary third parties. It follows that the limitation in amount of liability to £5,000,000 by the Nuclear Installations (Licensing and Insurance) Act, 1959, is inclusive of third party claims (whether for persons or property) and employer's liability claims from the nuclear reactor operator's employees.

Attention has been drawn to possible difficulties in determining the date of the happening of an incident giving rise to liability on the part of a reactor operator. It is not yet known what arrangements will be made for dealing with claims put forward after the expiry of ten years from the date of an incident, provided always that such date can be properly determined. It is conceivable that in such circumstances it might be decided to use the facilities of the insurance market in order to handle claims, rather than to set up expensive independent arrangements. It can be foreseen that after a serious incident a point might be reached when third party and employers' liability claims approached the aggregate of £5,000,000 up to

which sum insurance had been provided. What steps would need to be taken to ensure co-operation between insurers (or, indeed, self-insurers) and the State to be fully effective, especially in respect of claims under a process of servicing when the £5,000,000 had been reached, is something which must wait on the event, if ever it should occur.

PUBLIC LIABILITY POLICY FORM

WHEREAS a nuclear site licence (hereinafter called "the Licence") under the Nuclear Installations (Licensing and Insurance) Act 1959 (hereinafter called "the Act") has been granted to the Insured named in the Schedule hereto in respect of the Site specified therein

NOW THEREFORE in consideration of the Insured paying or having agreed to pay the Premium mentioned in the said Schedule to the Insurers named herein or to Insurers whose names are substituted therefor by memorandum hereon or attached hereto signed by or on behalf of all the Insurers concerned (such Insurers or substituted Insurers as the case may be being hereinafter called "the Insurers")

THE INSURERS SEVERALLY AGREE each for the proportion set against its name and subject to the terms exceptions and conditions contained herein or endorsed hereon as follows:

PART I

The Insurers will indemnify the Insured against any liability incurred by the Insured by virtue of subsection (1) of section 4 of the Act in respect of any claims in conjunction with the use of the Site which have been or may be duly established against the Insured in respect of any hurt to any person or any damage to any property caused by ionising radiations to which subsection (1) of section 4 of the Act applies (whether made by virtue of the said subsection (1) or otherwise) including any claim under an agreement for indemnity by the Insured Provided that the occurrence on or in connection with the use of the Site which gave rise to the claim shall have happened during the Periods of Insurance.

Exceptions to Part I

The insurance provided by this Part shall not apply to or include:

- (1) in the case of any claim which is duly established against the Insured but is not one for the full satis-

R E A C T O R S

faction of which funds are required to be available by subsection (1) of section 5 of the Act so much of the amount required to satisfy the claim as is not payable out of the said funds

- (2) any claim which is made against the Insured more than 10 years after the relevant date as defined in subsection (4) of section 4 of the Act.

The Limit of Indemnity under Part I

The aggregate liability of the Insurers in respect of all claims to which Part I applies shall not exceed £5,000,000 irrespective of the number of Periods of Insurance for which this Policy or any policy issued in substitution therefor during the same cover period as defined in subsection (1) of section 5 of the Act may be in force

PART II

The Insurers will indemnify the Insured against liability at law for damages in respect of:

- (a) death or illness of or bodily injury to any person
(b) loss of or damage to property

caused by any accident happening during the Periods of Insurance and occurring on the Site.

Exceptions to Part II

The insurance provided by this Part shall not apply to or include

- (1) any claims in connection with the use of the Site such as are mentioned in subsection (1) of section 5 of the Act
- (2) liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement
- (3) liability in respect of
- (a) death or illness of or bodily injury to any person under a contract of service or apprenticeship with or in receipt of a salary from the Insured if such death illness or injury arises out of and in the course of the employment or service of such person
- (b) loss of or damage to property
- (i) belonging to the Insured
- (ii) held in trust by or in the custody or control of the Insured or any servant or agent of the Insured

THIRD PARTY INSURANCE

- (c) death illness bodily injury loss or damage caused by or in connection with or arising from
 - (i) the ownership or possession or use by or on behalf of the Insured or the loading or unloading of any
 - (a) vessel craft or thing made or intended to float on or in or travel on or through water or air
 - (b) mechanically propelled vehicle (including any type of machine on wheels or on caterpillar tracks) not being an unlicensed vehicle used solely within the Site
 - (ii) (a) the bringing of the load to such vehicle for loading thereon or
 - (b) the taking away of the load from such vehicle after unloading therefrom
 - by the driver or attendant of such vehicle or within the limits of any carriageway or thoroughfare by any other person

The Limit of Indemnity under Part II

The liability of the Insurers under this Part for all damages payable to any claimant or any number of claimants in respect of or arising out of any one occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause shall not exceed £

PART III

The Insurers will pay

- (1) all costs and expenses recoverable by any claimant from the Insured
- (2) all costs and expenses incurred with the written consent of the Insurers

in respect of any claim for damages

- (a) to which the indemnity provided by Part I applies but the aggregate liability of the Insurers in this respect shall not exceed £500,000 irrespective of the number of Periods of Insurance for which this Policy or any policy issued in substitution therefor during the same cover period as defined in subsection (1) of section 5 of the Act may be in force
- (b) to which the indemnity provided by Part II applies the liability of the Insurers in this respect being unlimited in amount

General Exception

The Insurers shall not be liable in respect of any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power

PROVIDED THAT the liability of each of the Insurers individually in respect of the indemnity hereby granted shall be limited to the proportion set against its name or such other proportion as may be substituted therefor by memorandum hereon or attached hereto signed by or on behalf of the Insurers.

SIGNED on behalf of the British Insurance (Atomic Energy) Committee (hereinafter referred to as "the Committee") which is duly authorised by the Insurers.

THE SCHEDULE		Policy No.
The Insured:	Name _____	
	Address _____	
The Premium:		
The Site:	The Nuclear Installation and all buildings premises and properties used in connection therewith situate	
Periods of Insurance: (a) From: _____ To: _____ both dates inclusive (b) Any subsequent period for which the Insurers shall have accepted payment for the renewal of this Policy		
Description of the Nuclear Installation: (as specified in the Licence)		
Policy signed on: _____		

Warranties

- 1 It is warranted that there shall not be
 - (a) any change in the design specification or use of the Nuclear Installation
 - (b) any alteration in the code of practice for the safe operation thereof unless it be admitted by memorandum signed by or on behalf of the Insurers
- 2 It is warranted that the Insured shall take all reasonable steps to maintain a system of monitoring the level of radioactivity

(On a basis to be agreed with the Insurers in each particular case)

and shall keep an accurate record containing all particulars relative thereto and shall at all times allow the Insurers to inspect such record

- 3 It is warranted that all buildings and plant required by any authority or by the Insurers to be inspected shall be so inspected and records kept of such inspection and that any matter in consequence requiring attention shall be promptly dealt with
- 4 It is warranted that the Insured shall observe and fulfil the provisions of the Act and of any regulations made or directions given under the Act and the conditions attached to the Licence in so far as such provisions regulations directions and conditions relate to anything to be done or complied with by the Insured

CONDITIONS

1 This Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear

2 The Insured shall give written notice to the Insurers of any occurrence accident claim or proceedings immediately the same shall have come to the knowledge of the Insured or the Insured's representative

3 The Insured shall not without the consent in writing of the Insurers repudiate liability negotiate or make any admission offer promise or payment in connection with any occurrence accident claim or proceedings and the Insurers shall be entitled if they so desire to take over and conduct in the name of the Insured the defence of any claim or to prosecute in the name of the Insured at their own expense and for their own benefit any claim for indemnity or damages or otherwise against any persons and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Insurers may require

4 This Policy may be cancelled at any time by two months' notice by registered letter from the Insurers to the Insured and in such event the Insurers will return a pro rata portion of the premium for the unexpired part of the current period of insurance

5 The Insured shall take all reasonable precautions to prevent accidents The Insurers shall at all reasonable times have access to inspect the Site

6 The due observance and fulfilment of the terms provisions conditions and endorsements of this Policy by the Insured in so far as they relate to anything to be done or complied with by the Insured shall be conditions precedent to any liability of the Insurers to make any payment under this Policy

7 Wherever used in this Policy the expression "any person" shall be deemed to include any firm or corporation

Endorsement 1 Nothing in this Policy shall affect the right of the Insured to be indemnified subject to the Limit of Indemnity under Part I against any liability incurred by the Insured by virtue of subsection (1) of section 4 of the Act but the Insured shall repay to the Insurers on demand all sums paid by the Insurers which they would not have been liable to pay but for this endorsement

Endorsement 2 In the event of liability having been incurred by the Insured by virtue of subsection (1) of section 4 of the Act in respect of claims due to the intentional emission of ionising radiations incidental to the normal operation of the Nuclear Installation the Insurers will indemnify the Insured in the terms of Parts I and III but the Insured shall repay to the Insurers on demand all sums paid by the Insurers which they would not have been liable to pay but for this endorsement

PRODUCTS LIABILITY POLICY FORM

IN CONSIDERATION of the Insured engaged in the Business paying the Premium to the Insurers named herein or to Insurers whose names are substituted therefor by memorandum hereon or attached hereto signed by or on behalf of all the Insurers concerned (such Insurers or substituted Insurers as the case may be being hereinafter called the Insurers)

THE INSURERS SEVERALLY AGREE each for the proportion set against its name that in respect of Accidents arising out of fault or defect in the Products and occurring during the Period of Insurance or during any subsequent period for which the Insurers may accept payment for the renewal of this Policy and subject to the terms exceptions and conditions contained herein or endorsed hereon the Insurers will indemnify the Insured against liability at law for damages in respect of

- (a) death of or bodily or mental injury or illness to any person } caused by any such
- (b) loss of or damage to any property } Accident

And the Insurers will also pay

- (i) all costs and expenses recovered by any claimant from the Insured
 - (ii) all costs and expenses incurred with the written consent of the Insurers
- } in respect of any claim for damages to which the indemnity expressed in this Policy applies

EXCEPTIONS

The indemnity expressed in this Policy shall not apply to nor include

- (1) any claim arising from faulty improper or inadequate design or specification of the Products
- (2) liability for consequential loss of use of property other than property directly damaged as the result of an Accident or to which access is denied as a result of an Accident
- (3) liability for repairing reconditioning or replacing the Products
- (4) any claim arising from contamination by radioactivity not notified to the Insured within 10 years after the date of the accident giving rise to the claim
- (5) liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement
- (6) liability in respect of death of or bodily or mental injury or illness to any person under a contract of service or apprenticeship with the Insured if such death or bodily or mental injury or illness arises out of and in the course of the employment of such person by the insured
- (7) liability in respect of loss of or damage to property
 - (a) belonging to the Insured
 - (b) held in trust by or in the custody or control of the Insured or any servant or agent of the Insured
- (8) liability for any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power.

THE LIMIT OF INDEMNITY

The aggregate liability of the Insurers under this Policy in respect of all damages costs and expenses shall not exceed the Limit of Indemnity which shall be reduced automatically by the

amount of every payment made by the Insurers hereunder (whether during the first or any subsequent period of insurance or after the termination of this Policy) irrespective of the particular period or periods of insurance in which the accidents claims or proceedings giving rise to any such payments occurred or were made or instituted or notified to the Insurers

PROVIDED THAT the liability of each of the Insurers individually in respect of the indemnity hereby granted shall be limited to the proportion set against its name or such other proportion as may be substituted therefor by memorandum hereon or attached hereto signed by or on behalf of the Insurers.

SIGNED on behalf of the British Insurance (Atomic Energy) Committee which is duly authorised by the Insurers and herein-after referred to as the Committee.

THE SCHEDULE

Policy No.

The Insured:	Name Address
The Business:	Manufacturers or suppliers of
Accidents:	Accidents happening in connection with the Business arising out of fault or defect in the Products and occurring within a Nuclear Installation and within the Geographical Limits
Products:	Any material article or equipment supplied for or used in a Nuclear Installation or any container in which such material article or equipment is supplied
Nuclear Installation:	Any nuclear reactor or ancillary plant laboratory or storage or waste disposal facility associated with such nuclear reactor
Geographical Limits:	Anywhere in the world excluding the United States of America its territories and possessions Puerto Rico and the Canal Zone and Canada
Limit of Indemnity:	
Premium:	
Period of Insurance:	From: _____ To: _____ both dates inclusive
Policy Signed on:	

CONDITIONS

1 This Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear

2 The Insured shall give written notice to the Committee of any accident or claim or proceedings or of any circumstances which may give rise to a claim immediately the same shall have come to the knowledge of the Insured or his representative

3 The Insured shall not without the consent in writing of the Insurers repudiate liability negotiate or make any admission offer promise or payment in connection with any accident claim or proceedings and the Insurers shall be entitled if they so desire to take over and conduct in the name of the Insured the defence of any claim or to prosecute in the name of the Insured at their own expense and for their own benefit any claim for indemnity or damages or otherwise against any persons and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Insurers may require

4 The Insurers may at any time pay to the Insured the Limit of Indemnity (but deducting therefrom in such case any sum or sums already paid for damages costs and expenses in respect of any accident claim or proceedings) and upon such payment the Insurers shall relinquish conduct and control of each and every claim and be under no further liability under this Policy

5 If at the time of any claim there is or but for the existence of this Policy would be any other Policy of indemnity or insurance in favour of or effected by or on behalf of the Insured applicable to such claim the Insurers shall not be liable under this Policy to indemnify the Insured in respect of such claim

6 This Policy may be cancelled at any time by fifteen days' notice by registered letter from the Insurers to the Insured and in such event the Insurers will return a pro rata portion of the premium for the unexpired part of the current period of insurance

7 The Insured shall take all reasonable precautions to prevent fault or defect in the Products

8 The due observance and fulfilment of the terms conditions and endorsements of this Policy by the Insured in so far as they relate to anything to be done or complied with by them shall be conditions precedent to any liability of the Insurers to make any payment under this Policy

CHAPTER XVIII

RADIOACTIVE ISOTOPES: THIRD PARTY RISKS

The production and distribution of radioisotopes on behalf of the United Kingdom Atomic Energy Authority is now the responsibility of the Radiochemical Centre, Amersham, Bucks. Since 1948 when British radioisotopes first became available on a substantial scale, production has increased from year to year. The Authority's Annual Report shows the sales for the last five years as follows:

Year to the 31st March,	1955	...	£450,000
"	1956	...	£483,000
"	1957	...	£541,000
"	1958	...	£650,000
"	1959	...	£800,000

Many of these radioisotopes are sent overseas. It has been suggested that radioisotopes—also termed “tagged atoms”—will eventually be more important than nuclear power.

USES OF RADIOACTIVE ISOTOPES

Radioactive isotopes have been known to science since the early years of the 20th century when radium, itself a radioactive isotope, was isolated and subsequently used in many ways. To-day, however, radioisotopes are being used on an ever wider scale and they have been described as “A New Tool for Industry.” Last year a classified index was published showing nearly 300 different industrial uses of radioisotopes. Indeed, since radioisotopes are in such common and increasing use, no industrial or research third party risk should be assumed to be free of the hazard which radioactivity entails.

The main uses are as follows:

Agriculture

Radioisotopes are used in experimental and research work and in various ways in the control of pests. A dose of radiation either kills insect pests and their eggs forthwith or renders the male insects sterile so that the whole colony dies out because of inability to reproduce.

The natural mutation rate in plants can be improved by radiation so that, for instance, wheat with shorter straw length has been made possible. Much research is now proceeding with

a view to the application of special techniques to the preservation of foods, such as milk, eggs and meat. Irradiated strawberries and grapes keep for days longer after mild doses of radiation and their flavour is improved by reason of the chemical changes which take place.

Industry

In the steel industry, by the use of a suitable source (cobalt 60) adequately safeguarded, steel vessels up to six inches in thickness can be examined photographically for defects. The radioactive source is lowered into the vessel to be examined where it may be left overnight. Any cracks or other imperfections will be recorded exactly after development of the sensitized paper fastened around the outside of the object.

In modern textile mills radioisotopes are used to neutralise static electricity which causes threads to fly about in an inconvenient manner; also, undesirable marking of fabrics by dust, which otherwise accumulates, is avoided.

In the motor vehicle industry the iron in piston rings can be made radioactive and the degree of wear ascertained by measurement of the radioactivity imparted to the lubricant in the course of wear. Likewise, such radioisotopes incorporated in the treads of motor tyres can make possible exact measurements of wear to be determined and the conditions of most economical use decided. In civil engineering, devices known as "go-devils" are run through water and other pipes after they have been laid to ascertain where obstructions are to be found. Instead of having to take up possibly miles of piping to locate an obstruction the position in which the radioactive head of the "go-devil" has been halted can be determined by the use above ground of a geiger counter. Consequently, only the sections of the pipe obstructed have to be dealt with, thereby saving much time and money. Similarly, by the addition of small quantities of radioactive liquids, of short half-life, to the water in a main, the positions of leaks can be detected economically and quickly.

In the oil industry small quantities of a radioisotope can be inserted between different types of oil flowing through a pipe line so that, when a new batch arrives, it can be directed to a suitable tank. The radioisotope is again detected with certainty by a geiger counter used externally to the pipe.

Radiation can be used for production control. For example, at packing plants incorrectly filled packets or cartons can be automatically rejected as they go under the radioactive scanner.

Medicine

Radioisotopes play an important part in medicine where, for example, progress has been made in diagnosis (e.g., by administering weak radioactive solution and monitoring), and in the treatment of some forms of cancer.

Hospitals may soon discard much of their cumbersome sterilisation equipment. They may use plastic instruments instead, which can be thrown away immediately after use. They are packed in sealed polythene bags and then placed in cartons or boxes, when whole consignments are passed through an irradiation plant. This kills off any bacteria and thus leaves the instruments completely sterile until the bag is slit in the operating theatre. The entire process of radiation sterilising is automatic and completely safe to handle.

The principal consideration as insurers, however, must lie in the use of radioisotopes in agriculture and industry since it is in such activities that the chief hazards arise with which insurers are concerned.

ACCIDENTS WITH RADIOISOTOPES

The precautions taken are such that very few accidents occur. It is reassuring that radioisotopes can be obtained only from approved sources of the U.K.A.E.A. at Harwell and the Radiochemical Centre belonging to the Authority at Amersham. Radioisotopes are sold only to approved purchasers who know how to use them safely and who can be relied upon to use them properly. There is liaison between factory users, inspectorate and the Authority to ensure that adequate care continues to be taken by factory users.

Indeed, it is true to say that the whole of peaceful nuclear development to date, including a number of seemingly hazardous studies, has been carried out with an accident rate lower than that attributable to industry generally. Even in those countries where this development has been greatest there is no evidence of any serious accident having occurred.

The following are some of the accidents which have so far occurred in various parts of the world:

September, 1955 A radioisotope was lost for several hours and recovered undamaged at Wakefield, Yorks. It was being used for examination of joints in high pressure water pipes.

- December, 1955 A workman at Sydney, Australia, picked up an inch-long capsule while working in a power-house. He was seriously injured. Four other men were taken to hospital and two detained.
- January, 1956 Thieves stole from premises at Fulham, London, two lead containers, one of which contained radioactive irridium. It was used for checking welding work.
- January, 1956 A one-and-a-half inch tube of radioactive cobalt disappeared from a building site at Milford, Connecticut. Four workmen were exposed to radioactivity and were taken to hospital.
- April, 1956 A four-year-old child of Sydney, Australia, picked up in the street a capsule of cobalt 60 which was being used to test the gas pipes. The child and his mother were exposed, particularly the child whose blood count dropped; he was taken to hospital. A skin infection developed.
- August, 1956 A package containing 15 radon seeds fell from a porter's truck at King's Cross station, London, and broke open.
- February, 1957 A tiny capsule fell out of its lead casing and broke open on the floor at Chalk River, Canada; it was being used to inspect welded joints in the new reactor.
- May, 1957 At Houston, U.S.A., an 800-lb. shipping container full of pellets was being opened when there was something like an explosion. Radioactive dust was blown into the air and touched off the radiation alarm system.
- May, 1957 A firm which uses luminous paint for watch dials at Hampstead, London, was found to have contaminated premises well above the limits of tolerance.
- June, 1957 Four employees of a Hartford, Connecticut, firm received radiation doses in excess of permissible limits.
- November, 1957 Explosion of a capsule at Keleket X-Ray Corporation, Cincinnati, U.S.A., necessitating decontamination of the premises.

- January, 1958 During a surgical operation at Utrecht, Holland, a child vomited so that a radium needle was lost. It was found in the garden. The house and garden had to be decontaminated.
- May, 1958 At Berlin insufficient precautions were taken in the use of radioisotopes with consequent contamination of the premises.
- June, 1958 An error on the part of a workman when dealing with enriched uranium at Oak Ridge, U.S.A., caused injury to eight people, five of whom had bone disease.
- January, 1960 A bottle containing a solution of plutonium alloy broke at Los Alamos, U.S.A. The decontamination of the room occupied about a week.

METHODS OF PRODUCTION

Reactors. The majority of the 800 or so radioisotopes known are made by exposure of non-radioactive elements to radioactivity in nuclear reactors. A great deal of radioisotope production is undertaken in the reactors at Harwell.

Cyclotron. Some radioisotopes can be produced by means of the particle accelerator. Cyclotrons and similar devices are not infrequently found in the research laboratories of universities. Others are owned by industrialists for research and radioisotope production. Certain radioisotopes can more conveniently be produced in this way while, for some of them, this means is at present the only method of producing them.

Radioactive Waste. A third source of radioisotopes and one likely to be expanded considerably alongside the nuclear power programme of this country is the radioactive waste obtained from reactors from which radioisotopes can be recovered in the course of re-processing the waste. One of the embarrassments occasioned by the use of nuclear reactors is the increasing volume of this waste and the problems posed by its disposal. After use in a reactor the fuel (usually uranium) not only acquires impurities but undergoes physical and chemical changes with resultant radioactivity. Eventually, the fuel has to be removed from the reactor in order that it may be re-processed for further use. The radioactive waste products are then removed by complicated chemical separation processes. Research is now

going on with a view to separating out certain of the radioisotopes for use in medicine and industry. It is expected that, eventually, and at no very distant date, some of the waste will be used directly as radioactive sources in many industrial processes.

HAZARDS OF RADIOACTIVITY

The main hazards of radioisotopes lie in the particles or radiation which are constantly given off.

Radioisotopes vary greatly in the degree of hazard present. Many have very short half-lives, which means that any accidental exposure to them may well be short and well within the safety tolerances laid down by the national and international biologists. Others can cause serious and irreparable injury to those exposed to them. In all such circumstances a rigid code of practice is observed in handling and storing them. Fortunately, the more dangerous of the radioisotopes need such substantial shielding and complicated handling that those who work with them cannot be other than impressed with the need for care. Moreover, the training of those using them is often that of the laboratory where chemists and others have long been aware of the need for care in handling many dangerous substances. Nevertheless, radioactivity, unlike most other active agents, cannot be detected by any of the senses and very strict rules are necessary. Factory discipline in the handling of these substances is essential. It is equally important that there should be proper arrangements for storing the radioisotopes in the factory. The procedure should be that recommended by the United Kingdom Atomic Energy Authority.

Inevitably, as with the use of other dangerous substances, for example, explosives and poison gases, there is a risk that an accident will occur sooner or later, but except, perhaps, with the processing of fissile elements and re-processing of waste fission products, there would appear, in the present state of knowledge, no catastrophe hazard involved as regards radioisotopes as must be admitted in connection with reactor operation. If this be accepted, it is at least doubtful whether there is any justification for penalising unduly those who use these substances.

It cannot be denied that there is a risk that, in the event of a fire, lead containers of radioisotopes might melt when there would be the possibility of radioactive contamination of the premises in which they are used. Knowledge of this possibility

might well discourage firemen from dealing with a fire as rapidly as otherwise they might. It is advisable for users of radioisotopes in any quantity likely to be hazardous to notify fire brigades of the situation in industrial and other premises of such substances so that fire fighting need not be unnecessarily impeded by such considerations. Moreover, the authorities supplying radioisotopes do not supply them in unlimited quantities or without first being satisfied that the necessary safety precautions will be observed.

Protection can be designed to meet the circumstances, the hazard depending on the type of emissions from the radioisotopes concerned and their intensity. As time goes on radioactivity decays and the danger diminishes until in time (from less than a millionth of a second to millions of years) it ceases altogether.

Protection is possible by the provision of shielding capable of absorbing the radiations. Such shielding may, as with reactors, be of boron concrete, steel or lead or some other substance suitable to the special circumstances. Distance is a valuable protection since, if the distance between the source and the object protected is doubled, the intensity of radiation on the object is reduced to one-quarter and so on. Length of time of exposure to radiation is another factor. Certain tolerances have been laid down in connection, for example, with the human body. If by some accident an exposure greater than that which should be permitted is experienced for a short time, ill effects will not necessarily be felt. Nevertheless, care is essential in all stages in the handling of these substances which may be found in various forms—solids, dusts, liquids or gases. The inhalation or ingestion of radioactive substances may well bring serious and irremediable consequences.

Generally, there is no special hazard of explosion in radioisotopes. At the same time, current techniques enable most substances to be made radioactive and if a substance, be it solid or gas, normally gives rise to an explosion hazard, then, if an explosion occurs when the radioactive form of the substance is used, the radioactivity hazard will be encountered. It is far worse if something else explodes and thus gives rise to such radioactivity hazard.

Third party insurance, by its very nature, may immediately be concerned by the escape of radioactive materials from the premises in which they are kept or used. It needs no great imagination to envisage an escape of radioactive liquids from a factory or laboratory, for example, into drains, sewers and

streams. It does not follow that every such escape is necessarily serious, but the escape of any considerable volume of radioactive products in solution might well give rise to concern and to claims for real or imagined injury from persons some distance from the source of trouble. Likewise, the escape of radioactive gases as the result of factory or laboratory processes may be troublesome.

Every precaution from the third party point of view must be taken to ensure that third parties using the premises are adequately protected. (Better still, third parties should if possible not be admitted.) Such protection should be by suitable shielding from exposure to any danger from such a source and, where radioactive gases are concerned, proper ventilation should be ensured to draw the gases away from any person present in such a manner that the gases are rendered harmless by dilution in the atmosphere. Care must be taken to ensure that they are not released near any windows. Likewise, all liquids from laboratories or industrial premises using these substances must be rigidly controlled so that there is no unsafe release into drains, sewers or streams. It may well be that with the more dangerous radioisotopes (with usually the longer half-lives) special storage tanks will have to be provided in which the noxious liquids can remain until, with the passage of time, radioactivity has diminished to a safe level and the residue can be safely released.

TRANSPORTATION

Regulations already exist which are accepted internationally as to the transportation of radioisotopes through the post and on railways. Special precautions are taken in connection with the transport of radioisotopes in aircraft where, not infrequently, the packages are stored in the wing tips so that the exposure of the passengers is reduced to negligible proportions and at the same time the weight of the protective covering can be kept to a minimum.

Danger to third parties may arise from exposure to contaminated atmosphere, again emphasising the importance of proper and controlled ventilation. Likewise, contaminated equipment such as glass laboratory apparatus must be controlled until any radioactivity it may have acquired has been reduced to a safe level. It is dangerous to put such items into ordinary rubbish containers which may be handled by other employees or even by third parties unaware of the danger.

PROPOSAL FORM

There is now a question on many third party proposal forms which usually reads:

Will any radioactive substances be used? If so, give precise details.

Radioisotopes are in use in one form or another on many premises and insurers ought to have full particulars. A third party policy does not exclude liability in respect of the use of radioisotopes, but a separate insurance is sometimes arranged, for example, where the third party (general) indemnity is with another insurer and for one reason or other a specific insurance is required. Such an insurance usually relates to "all risks" and third party liability, as below:

- (1) All risks of accidental loss of or damage to the radioactive substance and its container while it is being installed, being used, or is in transit anywhere in Great Britain, Ireland, Northern Ireland, the Channel Islands or the Isle of Man, including its replacement in the event of a fire on the premises rendering the substance or its container unusable during part of or for the remainder of its active life. This does not cover loss or damage due to the action of light or atmospheric conditions or other gradually operating cause.
- (2) Liability (not arising under any contract or agreement to indemnify) which may devolve upon the owner or user of the material in respect of bodily injury to or damage to the property of any person not being under a contract of service or apprenticeship with the insured, but excluding any liability which is compulsorily insurable by reason of the Road Traffic Act, 1960, and subject to the limit of indemnity chosen.

A copy of a typical proposal form is given below:

1. Name of Proposer in full
2. Address
3. Trade or Business (full description)
4. Full description of radioactive materials

The extent of the risk naturally varies according to the type of radioactive materials used, for example, irridium, cobalt 60. The half-life is important and particularly if there are waste disposal problems.

5. (a) From what source are radioactive materials obtained? (a)

(b) Method of delivery. (b)

Radioactive materials may be delivered by the U.K.A.E.A., by rail, or may be taken to the proposer's premises in his own motor vehicle. They are also sent through the post. The King's Cross station incident (see page 304) is typical of what could happen.

6. To what use will such materials be put?

As shown on page 301, radioactive materials may be used for a wide variety of purposes, such as X-ray examinations of castings or static elimination.

7. How often will radioisotopes need to be replaced?

8. Are radioisotopes used as received or is bulk broken down on premises?

If the radioisotopes are used as they are received, the risk as a rule is not so great as where they are broken down on the premises.

9. Description of precautions taken in handling materials, on receipt and despatch, and routine for handling within premises.

There may be special rules and regulations, a copy of which is supplied to each employee, as well as warning notices exhibited on the premises. The storage arrangements for the materials must be known and such arrangements will depend to a large extent upon the type of materials. If there is a considerable quantity of dangerous material, it may have to be kept in a specially constructed concrete building with walls of approved thickness and the door kept locked with the key entrusted to a responsible official. Where there is an effluent risk the routine must include adequate precautions. If waste is stored, for instance, in special jars and properly monitored, the contents may later be disposed of through the drains, if harmless.

10. Number and description of employees handling materials Number Description

The larger the number of employees handling materials, the greater the risk, and the insurers will want to be satisfied that such employees are alive to the dangers involved. If trainees or students are concerned, they must be given adequate guidance and must work under supervision. The insurers will wish to know what training is given.

11. What tests are carried out to check radiation and at what intervals?

The area in which the materials are used will have to be monitored by a competent person and a record of the readings must be kept.

12. What warnings or checking devices are carried by personnel handling materials?

It is customary for employees to wear film badges and for those badges to be collected weekly for investigation. Dosimeters may also be provided.

13. Value of radioactive materials and containers £

14. (i) What insurance cover is required?
(Please strike out type of cover not required)
- (i) (a) Section (1) "All Risks"
 (b) Section (2) Public Liability

- (ii) If Section (2), state limit of indemnity required
 (a) for any one accident (ii) (a) £
 (b) in any one year of (b) £
 insurance
15. Has any proposal for insurance of this kind been previously made or has the risk been previously insured? If so, state with what Insurers and whether such proposal or renewal has been declined or an increased rate required
16. Give details of
 (a) Claims made upon the Proposer during the past five years in connection with accidents to members of the public arising out of radioisotopes (accidents which have not resulted in claims are to be included)
 (b) Any loss of or damage to radioisotopes suffered by the Proposer during the same period

I/We desire to insure with the respect of radioisotopes.

Company, Limited, in

I/We warrant that the above statements are true and complete and that nothing materially affecting the risk has been concealed by me/us, and I/we further agree that this proposal shall be incorporated in and taken as the basis of the proposed contract between me/us and the Company, Limited, and I/we agree to accept a Policy in the Company's usual form for this class of insurance.

.....19.... *Signature.....*
Signing this Form does not bind the Proposer to complete the Insurance.

In order to assist Proposers, the Company is willing to arrange for its Surveyor to attend to assist in the drafting of suitable safety regulations for the use of radioactive substances.

POLICY FORM

One policy form is applicable to "all risks" and also to liability to the public, and a typical form is set out below:

WHEREAS the Insured by a proposal and declaration which shall be the basis of this Contract and is deemed to be incorporated herein has applied to the COMPANY LIMITED (hereinafter called the Company) for the insurance hereinafter contained and has paid or agreed to pay the Premium as consideration for such insurance in respect of accident loss or damage occurring during any Period of Insurance in Great Britain Ireland Northern Ireland the Channel Islands or the Isle of Man

NOW THIS POLICY WITNESSETH that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon

SECTION 1—LOSS OF OR DAMAGE TO THE EQUIPMENT

The Company will indemnify the Insured against loss of or damage to the Equipment while being installed used or in transit including loss sustained in the event of a fire on the Premises by which the Radioisotopes are rendered unusable during part of or for the remainder of their active lives

Active life for the purposes of this insurance shall be deemed to be the half life as calculated by the United Kingdom Atomic Energy Authority

The liability of the Company under this Section shall not exceed the Sum Insured in any Period of Insurance

Exceptions to Section 1

The Company shall not be liable under this Section in respect of loss damage or destruction due to

- (i) the action of light or atmospheric conditions
- (ii) natural decay of the Radioisotopes or
- (iii) any other gradually operating cause

SECTION 2—LIABILITY TO THE PUBLIC

The Company will indemnify the Insured in respect of accidents caused by through or in connection with the Equipment against liability at law for damages in respect of

- (i) death of or bodily injury (including illness) to any person not being a person who at the time of the accident is engaged in and upon the service of the Insured under a contract of service or apprenticeship
- (ii) damage to property not belonging to nor held in trust by nor in the custody or control of the Insured or a member of the Insured's family

The liability of the Company under this Section in respect of or arising out of one occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause shall not exceed the Limit of Indemnity

In respect of a claim for damages to which the indemnity expressed in this Section applies the Company will also pay

- (a) all costs and expenses recovered by any claimant from the Insured and
- (b) all costs and expenses incurred with the written consent of the Company

In the event of the death of the Insured the Company will in respect of the liability incurred by the Insured indemnify the Insured's personal representatives in the terms of and subject to the limitations of this Policy provided that such personal representatives shall as though they were the Insured observe fulfil and be subject to the Terms Exceptions and Conditions so far as they can apply

Exception to Section 2

The Company shall not be liable under this Section in respect of any liability which is compulsorily insurable under any Road Traffic legislation in Great Britain Ireland Northern Ireland the Channel Islands or the Isle of Man.

General Exceptions

The Company shall not be liable in respect of

- (1) claims arising out of liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement
- (2) (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
(b) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (3) any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power

IN WITNESS WHEREOF the undersigned acting on behalf of and under the authority of the Company hath hereunto set his hand

SCHEDULE

Policy No. T

The Insured: Name
Address

The Premises	
Sum Insured	Limit of Indemnity
Period of Insurance	Renewal Date
(a) From To	
(b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept the Renewal Premium	
Premium £	Renewal Premium £
The Equipment Radioisotopes their containers and handling devices owned or used by the Insured	
The Radioisotopes	
Signed on the	... Examined

CONDITIONS

1 This Policy and the Schedule shall be read together and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such meaning wherever it may appear

2 If at the time of any loss damage or liability arising under Sections 1 or 2 there shall be any other insurance covering such loss damage or liability or any part thereof the Company shall not be liable for more than its rateable proportion thereof

3 The Insured shall on the happening of any loss or damage to property insured under Section 1 give immediate notice thereof in writing to the Company and shall at the Insured's own expense within thirty days after the happening of such loss or damage deliver to the Company a claim in writing with such detailed particulars and proofs as may be reasonably required. In the case of loss or damage by burglary housebreaking larceny theft or any attempt thereat the Insured shall also give immediate notice of the Police

The Insured shall on receiving notice of any accident or claim arising under Section 2 give immediate notice thereof in writing to the Company and shall supply full particulars thereof in writing and shall send to the Company any writ summons or other legal process issued or commenced against the Insured and shall give all necessary information and assistance to enable the Company to settle or resist any claim or to institute proceedings

The Insured shall not incur any expense in making good any damage without the written consent of the Company and shall not negotiate pay settle admit or repudiate any claim without the like consent

4 The Company shall be entitled

- (a) on the happening of any loss or damage to the property insured under Section 1 to enter any building where the loss or damage has happened and to take and keep possession of the property hereby insured and to deal with the salvage in a reasonable manner and this Policy shall be proof of leave and licence for such purpose. No property may be abandoned to the Company
- (b) to undertake in the name and on behalf of the Insured the absolute conduct control and settlement of any proceedings and to take proceedings at its own expense and for its own benefit but in the name of the Insured to recover compensation or secure indemnity from any third party in respect of anything covered by this Policy

5 In connection with any claim or claims against the Insured arising out of one occurrence or all occurrences of a series consequent on or attributable to one source or original cause the Company may at any time pay to the Insured the Limit of Indemnity (after deduction of any sum or sums already paid as damages) or lesser amount for which any such claim or claims can be settled and upon such payment the Company shall relinquish the conduct and control of and be under no further liability in connection with such claim or claims except for costs and expenses recoverable from the Insured or incurred with the written consent of the Company in respect of matters prior to the date of such payment

6 The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at the Insured's last known address and in such event the Insured shall become entitled to the return of a proportionate part of the Premium or Renewal Premium corresponding to the unexpired period of Insurance

7 The Insured shall take ordinary and reasonable precautions for the safety of the Equipment to prevent accidents and illness and to comply with all statutory or other obligations

and regulations imposed by any Authority and shall maintain the Equipment in sound condition. In the event of the discovery of any defect or danger the Insured shall forthwith cause such defect or danger to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances may require

8 If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to an Arbitrator to be appointed by the parties in accordance with the Statutory provisions in that behalf for the time being in force. Where any difference is by this Condition to be referred to arbitration the making of an Award shall be a condition precedent to any right of action against the Company

9 The due observance and fulfilment of the Terms Conditions and Endorsements so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy

CLAIMS

Any public liability claims that may arise out of the use of radioactive isotopes will be dealt with on the same general lines as those considered in chapter XV. They should not in the ordinary way be serious (although the unexpected can happen), for as stated in the Report of the Advisory Committee, para 71.

"If radioisotopes are used as advised by the United Kingdom Atomic Energy Authority and kept suitably shielded in adequate containers, the hazards involved need not cause alarm."

A claimant will have to prove irradiation damage through the negligence of the insured, with build-up of radiation possibly over a period of time in the one location. This will not necessarily be easy to substantiate in the absence of the type of record kept in atomic establishments.

In chapter XVII reference is made to the suggestion that registers be kept (see page 289) and this will be a necessary precaution not only if there should be a reactor incident but also if, say, the container of radioisotopes should break in transit and expose those within range to harmful radiation.

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A P P E N D I C E S

APPENDIX I

Third Parties (Rights against Insurers) Act, 1930

An Act to confer on third parties rights against insurers of third party risks in the event of the insured becoming insolvent, and in certain other events.

[10th July, 1930.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1) Where under any contract of insurance a person (hereinafter referred to as the insured) is insured against liabilities to third parties which he may incur, then—

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors ; or
- (b) in the case of the insured being a company, in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to the company, or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge ; if, either before or after that event, any such liability as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order is made under section one hundred and thirty of the Bankruptcy Act, 1914, for the administration of the estate of a deceased debtor according to the law of bankruptcy, then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in the said Act, be transferred to and vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance made after the commencement of this Act in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in paragraph (a) or paragraph (b) of subsection (1) of this section or upon the making of an order under section one hundred and thirty of the Bankruptcy Act, 1914, in respect of his estate, the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or subsection (2) of this section, the insurer shall, subject to the provisions of section three of this Act, be under the same liability to the third party as he would have been under to the insured, but—

THIRD PARTY INSURANCE

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Act shall affect the rights of the insured against the insurer in respect of the excess; and
- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this Act shall affect the rights of the third party against the insured in respect of the balance.

(5) For the purposes of this Act, the expression "liabilities to third parties," in relation to a person insured under any contract of insurance, shall not include any liability of that person in the capacity of insurer under some other contract of insurance.

(6) This Act shall not apply—

- (a) where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company; or
- (b) to any case to which subsections (1) and (2) of section seven of the Workmen's Compensation Act, 1925, applies.

2.—(1) In the event of any person becoming bankrupt or making a composition or arrangement with his creditors, or in the event of an order being made under section one hundred and thirty of the Bankruptcy Act, 1914, in respect of the estate of any person, or in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge it shall be the duty of the bankrupt, debtor, personal representative of the deceased debtor or company, and, as the case may be, of the trustee in bankruptcy, trustee, liquidator, receiver, or manager, or person in possession of the property to give at the request of any person claiming that the bankrupt, debtor, deceased debtor, or company is under a liability to him such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Act and for the purpose of enforcing such rights, if any, and any contract of insurance, in so far as it purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the giving of any such information in the events aforesaid or otherwise to prohibit or prevent the giving thereof in the said events shall be of no effect.

(2) If the information given to any person in pursuance of subsection (1) of this section discloses reasonable ground for supposing that there have or may have been transferred to him under this Act rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said subsection on the persons therein mentioned.

(3) The duty to give information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

3. Where the insured has become bankrupt or where, in the case of the insured being a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed, with respect to the company, no agreement made between the insurer and the insured after liability has been incurred to a third party and after the commencement of the bankruptcy or winding-up, as the case may be, nor any

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waiver, assignment, or other disposition made by, or payment made to the insured after the commencement aforesaid shall be effective to defeat or affect the rights transferred to the third party under this Act, but those rights shall be the same as if no such agreement, waiver, assignment, disposition or payment had been made.

4. In the application of this Act to Scotland—

- (a) the expression “company” includes a limited partnership;
- (b) any reference to an order under section one hundred and thirty of the Bankruptcy Act, 1914, for the administration of the estate of a deceased debtor according to the law of bankruptcy, shall be deemed to include a reference to an award of sequestration of the estate of a deceased debtor, and a reference to an appointment of a judicial factor, under section one hundred and sixty-three of the Bankruptcy (Scotland) Act, 1913, on the insolvent estate of a deceased person.

5. This Act may be cited as the Third Parties (Rights against Insurers) Act, 1930.

APPENDIX II

Law Reform (Miscellaneous Provisions) Act, 1934

An Act to amend the law as to the effect of death in relation to causes of action and as to the awarding of interest in civil proceedings.

[25th July, 1934.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1) Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims under section one hundred and eighty-nine of the Supreme Court of Judicature (Consolidation) Act, 1925, for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person:—

- (a) shall not include any exemplary damages ;
- (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry ;
- (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either—

- (a) proceedings against him in respect of that cause of action were pending at the date of his death ; or
- (b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any

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rights conferred on the dependants of deceased persons by the Fatal Accidents Acts, 1846 to 1908,* or the Carriage by Air Act, 1932, and so much of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Acts as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

(7) Subsections (1), (2), (5) and (6) of section twenty-six of the Administration of Estates Act, 1925, shall cease to have effect.

2.—(1) For the purposes of the Fatal Accidents Acts, 1846 to 1908, a person shall be deemed to be the parent or child of the deceased person notwithstanding that he was only related to him illegitimately or in consequence of adoption; and accordingly in deducing any relationship which under the provisions of those Acts is included within the meaning of the expressions "parent" and "child," any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father or, as the case may be, of his adopters.

(2) In this section the expression "adopted person" means a person who has been adopted, whether before or after the commencement of this Act, in pursuance of an adoption order made under the Adoption of Children Act, 1926, or the Adoption of Children (Scotland) Act, 1930, or the Adoption of Children Act (Northern Ireland), 1929, and for the purpose of any proceedings under the Fatal Accidents Acts, 1846 to 1908, an extract of, or a certified copy of, any entry in an Adopted Children Register which under subsection (6) of section eleven of the Adoption of Children (Scotland) Act, 1930, or under subsection (5) of section eleven of the Adoption of Children Act (Northern Ireland), 1929, would in Scotland or Northern Ireland, as the case may be, be receivable as evidence of certain facts, shall be receivable as evidence of those facts in England.

(3) In an action brought under the Fatal Accidents Acts, 1846 to 1908, damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

(4) This section shall not apply in relation to any action in respect of the death of any person before the commencement of this Act.

3.—(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

* It should be noted that in proceedings claiming damages under the Fatal Accidents Acts, 1846 to 1908, and also under the Law Reform (Miscellaneous Provisions) Act, 1934, if the persons who will benefit under both Statutes are the same (as they normally are), then the damages awarded under one heading are taken into account when assessing the damages under the other.

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Provided that nothing in this section—

- (a) shall authorise the giving of interest upon interest; or
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange.

(2) Sections twenty-eight and twenty-nine of the Civil Procedure Act, 1833, shall cease to have effect.

4.—(1) This Act may be cited as the Law Reform (Miscellaneous Provisions) Act, 1934.

(2) This Act shall not extend to Scotland or Northern Ireland.

APPENDIX III

Law Reform (Contributory Negligence) Act, 1945

An Act to amend the law relating to contributory negligence and for purposes connected therewith.

[15th June, 1945.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage :

Provided that—

- (a) this subsection shall not operate to defeat any defence arising under a contract ;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of the foregoing subsection subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Section six of the Law Reform (Married Women and Tortfeasors) Act, 1935 (which relates to proceedings against, and contribution between, joint and several tortfeasors), shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) of this section in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under the Law Reform (Miscellaneous Provisions) Act, 1934, the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under the Fatal Accidents Acts, 1846 to 1908, shall be reduced to a proportionate extent

(5) Where, in any case to which subsection (1) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading the Limitation Act, 1939, or any other enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(6) Where any case to which subsection (1) of this section applies is tried with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

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(7) Article 21 of the Convention contained in the First Schedule to the Carriage by Air Act, 1932 (which empowers a court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person), shall have effect subject to the provisions of this section.

2.—(1) Where, within the time limited for the taking of proceedings under the Workmen's Compensation Acts, 1925 to 1943, an action is brought to recover damages independently of the said Acts in respect of an injury or disease giving rise to a claim for compensation under the said Acts, and it is determined in that action that—

- (a) damages are recoverable independently of the said Acts subject to such reduction as is mentioned in subsection (1) of the foregoing section of this Act; and
- (b) the employer would have been liable to pay compensation under the Workmen's Compensation Acts, 1925 to 1943;

subsection (2) of section twenty-nine of the Workmen's Compensation Act, 1925 (which enables the court, on the dismissal of an action to recover damages independently of the said Acts, to assess and award compensation under the said Acts), shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with the said subsection (2), no damages shall be recoverable in the said action.

This subsection shall apply, with the necessary adaptations, in any case where compensation is recoverable under a scheme certified or made under the Workmen's Compensation Acts, 1925 to 1943, or under the Workmen's Compensation and Benefit (Byssinosis) Act, 1940, if the scheme applies section twenty-nine of the Workmen's Compensation Act, 1925, or contains any provision similar to that section.

(2) Where a workman or his personal representative or dependant has recovered compensation under the Workmen's Compensation Acts, 1925 to 1943, or under any scheme certified under the Workmen's Compensation Act, 1925, in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section one of this Act from some person other than the employer (hereinafter referred to as "the third party"), any right conferred by section thirty of the Workmen's Compensation Act, 1925, on the person by whom the compensation was paid, or on any person called on to pay an indemnity under section six of that Act, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the workman had not been at fault.

3.—(1) This Act shall not apply to any claim to which section one of the Maritime Conventions Act, 1911, applies and that Act shall have effect as if this Act had not passed.

(2) This Act shall not apply to any case where the acts or omissions giving rise to the claim occurred before the passing of this Act.

4. The following expressions have the meanings hereby respectively assigned to them, that is to say—

"court" means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined;
"damage" includes loss of life and personal injury;

APPENDIX

"dependant" means any person for whose benefit an action could be brought under the Fatal Accidents Acts, 1846 to 1908;

"employer" and "workman" have the same meaning as in the Workmen's Compensation Act, 1925, as amended by any subsequent enactment;

"fault" means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence.

5. In the application of this Act to Scotland—

- (a) the expression "dependant" means, in relation to any person, any person who would in the event of such first mentioned person's death through the fault of a third party be entitled to sue that third party for damages or solatium; and the expression "fault" means wrongful act, breach of statutory duty or negligent act or omission which gives rise to liability in damages, or would, apart from this Act, give rise to the defence of contributory negligence;
- (b) for any reference to section six of the Law Reform (Married Women and Tortfeasors) Act, 1935, there shall be substituted a reference to section three of the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1940 (which relates to contribution among joint wrongdoers);
- (c) for subsection (4) of section one the following subsection shall be substituted—

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, a claim by any dependant of the first mentioned person for damages or solatium in respect of that person's death shall not be defeated by reason of his fault, but the damages or solatium recoverable shall be reduced to such extent as the court thinks just and equitable having regard to the share of the said person in the responsibility for his death.

6.—(1) If the Parliament of Northern Ireland pass an Act similar to the provisions of this Act, Article 21 of the Convention contained in the First Schedule to the Carriage by Air Act, 1932, shall have effect as respects courts in Northern Ireland, subject to the provisions of the said Act of the Parliament of Northern Ireland.

(2) This Act, except the provisions of the last foregoing subsection, shall not extend to Northern Ireland.

7. This Act may be cited as the Law Reform (Contributory Negligence) Act, 1945.

APPENDIX IV

Law Reform (Personal Injuries) Act, 1948

An Act to abolish the defence of common employment, to amend the law relating to the measure of damages for personal injury or death, and for purposes connected therewith.

[30th June, 1948.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him, that that person was at the time the injuries were caused in common employment with the person injured.

(2) Accordingly the Employers' Liability Act, 1880, shall cease to have effect, and is hereby repealed.

(3) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this Act), shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

2.—(1) In an action for damages for personal injuries (including any such action arising out of a contract), there shall in assessing those damages be taken into account, against any loss of earnings or profits which has accrued or probably will accrue to the injured person from the injuries, one half of the value of any rights which have accrued or probably will accrue to him therefrom in respect of industrial injury benefit, industrial disablement benefit or sickness benefit for the five years beginning with the time when the cause of action accrued.

This subsection shall not be taken as requiring both the gross amount of the damages before taking into account the said rights and the net amount after taking them into account to be found separately.

(2) In determining the value of the said rights there shall be disregarded any increase of an industrial disablement pension in respect of the need of constant attendance.

(3) The reference in subsection (1) of this section to assessing the damages for personal injuries shall, in cases where the damages otherwise recoverable are subject to reduction under the law relating to contributory negligence or are limited by or under any Act or by contract, be taken as referring to the total damages which would have been recoverable apart from the reduction or limitation.

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(4) In an action for damages for personal injuries (including any such action arising out of a contract), there shall be disregarded, in determining the reasonableness of any expenses, the possibility of avoiding those expenses or part of them by taking advantage of facilities available under the National Health Service Act, 1946, or the National Health Service (Scotland) Act, 1947, or of any corresponding facilities in Northern Ireland.

(5) In assessing damages in respect of a person's death in any action under the Fatal Accidents Act, 1846, as amended by any subsequent enactment, or under the Carriage by Air Act, 1932, there shall not be taken into account any right to benefit resulting from that person's death.

(6) For the purposes of this section—

(a) the expression "benefit" means benefit under the National Insurance Acts, 1946, or any corresponding Act of the Parliament of Northern Ireland;

(b) expressions used in the National Insurance Acts, 1946, for any description of benefit under those Acts have the same meanings as in those Acts, except that they include also the like benefit, if any, under any corresponding Act of the Parliament of Northern Ireland;

(c) an industrial disablement gratuity shall be treated as benefit for the period taken into account by the assessment of the extent of the disablement in respect of which it is payable.

3. In this Act the expression "personal injury" includes any disease and any impairment of a person's physical or mental condition, and the expression "injured" shall be construed accordingly.

4. This Act shall bind the Crown.

5.—(1) If the Parliament of Northern Ireland passes legislation for purposes similar to the purposes of this Act, then in connection with that legislation any limitation on the powers of that Parliament imposed by the Government of Ireland Act, 1920, shall not apply in so far as it would preclude that Parliament from enacting a provision corresponding to some provision of this Act.

(2) This Act, except in so far as it enlarges the powers of the Parliament of Northern Ireland, shall not extend to Northern Ireland.

6.—(1) This Act may be cited as the Law Reform (Personal Injuries) Act, 1948.

(2) Section one and subsection (1) of section two of this Act shall apply only where the cause of action accrues on or after the day appointed for the National Insurance (Industrial Injuries) Act, 1946, to take effect; but subsections (4) and (5) of the said section two shall apply whether the cause of action accrued or the action was commenced before or after the commencement of this Act.

APPENDIX V

Law Reform (Limitation of Actions, etc.) Act, 1954

An Act to assimilate, in certain respects and subject to certain exceptions and special provisions, the law applicable to proceedings against public authorities (including the Crown) and persons acting in pursuance or execution or intended execution of enactments to that applicable in other cases; to amend the law as to the time limited for bringing legal proceedings and as to the survival of causes of action against the estates of deceased persons; and for purposes connected with the matters aforesaid.

[4th June, 1954.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. The following enactments (being enactments providing special periods of limitation for, or other privileges for the defendants in, legal proceedings against public authorities or persons acting in pursuance or execution or intended execution of Acts), that it to say—
 - (a) the Public Authorities Protection Act, 1893;
 - (b) section twenty-one of the Limitation Act, 1939;
 - (c) subsections (1) and (2) of section forty-nine of the Coal Industry Nationalisation Act, 1946, section seventeen of the New Towns Act, 1946, section eleven of the Transport Act, 1947, section twelve of the Electricity Act, 1947, section fourteen of the Gas Act, 1948, and section three of the Air Corporations Act, 1953; and
 - (d) subsections (1) and (2) of section one hundred and seventy of the Army Act (both as originally enacted and as extended by subsection (5) of section thirteen of the Visiting Forces Act, 1952) and subsections (1) and (2) of section one hundred and seventy of the Air Force Act,
- are hereby repealed.

- 2.—(1) At the end of subsection (1) of section two of the Limitation Act, 1939 (which subsection provides, amongst other things, that there shall be a limitation period of six years for actions founded on simple contract or on tort) the following proviso shall be inserted—

“ Provided that, in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years.”

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(2) At the end of section twenty-two of the Limitation Act, 1939 (which, in certain cases where the person to whom a right of action has accrued was under a disability, extends the period of limitation until six years from the date when the disability ceased or the person died, whichever event first occurred) there shall be added the following subsection—

“(2) In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person,—

- (a) the preceding provisions of this section shall have effect as if for the words ‘six years’ there were substituted the words ‘three years’; and
- (b) this section shall not apply unless the plaintiff proves that the person under the disability was not, at the time when the right of action accrued to him, in the custody of a parent.”

(3) In subsection (1) of section thirty-one of the Limitation Act, 1939, after the definitions of “personal estate” and “personal property” there shall be inserted the following definition—

“‘personal injuries’ includes any disease and any impairment of a person’s physical or mental condition”.

3. In section three of the Fatal Accidents Act, 1846 (which provides that actions under that Act shall be commenced within twelve calendar months after the death of the deceased person) for the words “twelve calendar months” there shall be substituted the words “three years”.

4. In section one of the Law Reform (Miscellaneous Provisions) Act, 1934 (which provides, amongst other things, for the survival, with certain exceptions, of all causes of action against a deceased person’s estate), so much of subsection (3) as provides that proceedings in respect of causes of action in tort which by virtue of that section survive against the estate of a deceased person are not to be maintainable unless the cause of action arose not earlier than six months before the death of the deceased is hereby repealed.

5.—(1) This Act shall bind the Crown.

(2) Section eight of the Maritime Conventions Act, 1911 (which relates to the limitation of actions in respect of damage or loss caused to or by vessels and the limitation of actions in respect of salvage services) shall apply in the case of all Her Majesty’s ships as it applies in the case of other ships, and accordingly, in subsection (1) of section thirty of the Crown Proceedings Act, 1947, the words “except in the case of proceedings in respect of any alleged fault of a ship of war or a ship for the time being appropriated to the service of the armed forces of the Crown or to the service of the Post Office” are hereby repealed.

(3) No proceedings shall lie against the Crown under subsection (2) of section nine of the Crown Proceedings Act, 1947 (which authorises the taking of proceedings against the Crown in respect of loss of or damage to registered inland postal packets) unless the proceedings are begun within the twelve months beginning with the date on which the packet in question was posted.

(4) In the application of this section to Northern Ireland, the references therein to subsection (1) of section thirty and subsection (2) of section nine of the Crown Proceedings Act, 1947, shall be construed as references to those subsections as they apply in Northern Ireland in relation to Her Majesty’s Government in the United Kingdom.

THIRD PARTY INSURANCE

6.—(1) No action of damages where the damages claimed consist of or include damages or solatium in respect of personal injuries to any person shall be brought in Scotland against any person unless it is commenced—

- (a) in the case of an action brought by or on behalf of a person in respect of injuries sustained by that person, before the expiration of three years from the date of the act, neglect or default giving rise to the action or, where such act, neglect or default was a continuing one, from the date on which the act, neglect or default ceased;
- (b) in the case of an action brought by or on behalf of a person to whom a right of action has accrued on the death of another person in consequence of injuries sustained by that other person, before the expiration of three years from the date of that death:

Provided that for the purposes of paragraph (b) of this subsection a right of action shall be deemed not to have accrued to a person on the death of another person by whom injuries have been sustained if that other person or someone on his behalf was not, immediately before his death, himself entitled to bring an action in respect of the injuries.

(2) If on the date when any right of action accrued for which a period of limitation is prescribed by the foregoing subsection the person to whom it accrued was under legal disability by reason of pupilarity or minority or of unsoundness of mind and was not in the custody of a parent, the action may be brought at any time before the expiration of three years from the date when the person ceased to be under disability, notwithstanding that the period of limitation has expired.

For the purposes of this subsection "parent" includes a step-parent and a grand-parent and in deducing any relationship an illegitimate person and a person adopted in pursuance of any enactment shall be treated as the legitimate child of his mother or, as the case may be, of his adoptor.

(3) In this section the expression "personal injuries" includes any disease and any impairment of a person's physical or mental condition.

(4) In addition to the enactments specified in section one of this Act, the following enactments (being enactments providing special periods of limitation in Scotland for certain legal proceedings against public authorities) that is to say—

- (a) section four of the Malicious Damage Act, 1812, and section three of the Malicious Damage (Scotland) Act, 1816, in so far as they limit the period within which proceedings may be commenced;
- (b) section fifteen of the Riotous Assemblies (Scotland) Act, 1822;
- (c) section one hundred and sixty-six of the Public Health (Scotland) Act, 1897, in so far as it limits the period within which proceedings may be commenced; and
- (d) section seventy of the National Health Service (Scotland) Act, 1947, in so far as it limits the period within which proceedings may be commenced,
are hereby repealed.

7.—(1) The time for bringing proceedings in respect of a cause of action which arose before the passing of this Act shall, if it has not then already expired, expire at the time when it would have expired apart from the provisions of this Act or at the time when it would have expired if all the provisions of this Act had at all material times been in force, whichever is the later.

(2) The repeal effected by this Act in subsection (3) of section one of the Law Reform (Miscellaneous Provisions) Act, 1934, shall, in the

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case of a person dying after the passing of this Act, apply as well in relation to causes of action arising before, as in relation to causes of action arising after, the passing thereof.

(3) Save as aforesaid, nothing in this Act shall affect any action or proceeding if the cause of action arose before the passing thereof.

8.—(1) This Act may be cited as the Law Reform (Limitation of Actions, &c.) Act, 1954.

(2) Section five of this Act, and so much of this Act as repeals provisions of the Army Act and the Air Force Act, extend to Northern Ireland, but, save as aforesaid, this Act extends to Great Britain only.

(3) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

APPENDIX VI

Hotel Proprietors Act, 1956

An Act to amend the law relating to inns and innkeepers.

[2nd August, 1956.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—(1) An hotel within the meaning of this Act, shall, and any other establishment shall not, be deemed to be an inn; and the duties, liabilities and rights which immediately before the commencement of this Act by law attached to an innkeeper as such shall, subject to the provisions of this Act, attach to the proprietor of such an hotel and shall not attach to any other person.

(2) The proprietor of an hotel shall, as an innkeeper, be under the like liability, if any, to make good to any guest of his any damage to property brought to the hotel as he would be under to make good the loss thereof.

(3) In this Act, the expression " hotel " means an establishment held out by the proprietor as offering food, drink and, if so required, sleeping accommodation, without special contract, to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received.

2.—(1) Without prejudice to any other liability incurred by him with respect to any property brought to the hotel, the proprietor of an hotel shall not be liable as an innkeeper to make good to any traveller any loss of or damage to such property except where—

- (a) at the time of the loss or damage sleeping accommodation at the hotel had been engaged for the traveller; and
- (b) the loss or damage occurred during the period commencing with the midnight immediately preceding, and ending with the midnight immediately following, a period for which the traveller was a guest at the hotel and entitled to use the accommodation so engaged.

(2) Without prejudice to any other liability or right of his with respect thereto, the proprietor of an hotel shall not as an innkeeper be liable to make good to any guest of his any loss of or damage to, or have any lien on, any vehicle or any property left therein, or any horse or other live animal or its harness or other equipment.

(3) Where the proprietor of an hotel is liable as an innkeeper to make good the loss of or any damage to property brought to the hotel, his liability to any one guest shall not exceed fifty pounds in respect of any one article, or one hundred pounds in the aggregate, except where—

- (a) the property was stolen, lost or damaged through the default, neglect or wilful act of the proprietor or some servant of his; or

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- (b) the property was deposited by or on behalf of the guest expressly for safe custody with the proprietor or some servant of his authorised, or appearing to be authorised, for the purpose, and, if so required by the proprietor or that servant, in a container fastened or sealed by the depositor; or
- (c) at a time after the guest had arrived at the hotel, either the property in question was offered for deposit as aforesaid and the proprietor or his servant refused to receive it, or the guest or some other guest acting on his behalf wished so to offer the property in question but, through the default of the proprietor or a servant of his, was unable to do so:

Provided that the proprietor shall not be entitled to the protection of this subsection unless, at the time when the property in question was brought to the hotel, a copy of the notice set out in the Schedule to this Act printed in plain type was conspicuously displayed in a place where it could conveniently be read by his guests at or near the reception office or desk or, where there is no reception office or desk, at or near the main entrance to the hotel.

- 3.—(1) This Act may be cited as the Hotel Proprietors Act, 1956.
- (2) The Innkeepers' Liability Act, 1863, is hereby repealed.
- (3) This Act shall not extend to Northern Ireland.
- (4) This Act shall come into operation on the first day of January, nineteen hundred and fifty-seven.

SCHEDULE

NOTICE

Loss of or Damage to Guests' Property

Under the Hotel Proprietors Act, 1956, an hotel proprietor may in certain circumstances be liable to make good any loss of or damage to a guest's property even though it was not due to any fault of the proprietor or staff of the hotel.

This liability however—

- (a) extends only to the property of guests who have engaged sleeping accommodation at the hotel;
- (b) is limited to £50 for any one article and a total of £100 in the case of any one guest, except in the case of property which has been deposited, or offered for deposit, for safe custody;
- (c) does not cover motor-cars or other vehicles of any kind or any property left in them, or horses or other live animals.

This notice does not constitute an admission either that the Act applies to this hotel or that liability thereunder attaches to the proprietor of this hotel in any particular case.

APPENDIX VII

Housing Act, 1957 (Sections 6 and 7)

Obligation of Lessors of Small Houses

6.—(1) This section applies:

- (a) to a contract made before the thirty-first day of July, nineteen hundred and twenty-three, for letting for human habitation a house at a rent not exceeding:
 - (i) in the case of a house situate in the administrative county of London, forty pounds;
 - (ii) in the case of a house situate in a borough or urban district outside the administrative county of London, being a borough or district which at the date of the contract had according to the last published census a population of fifty thousand or upwards, twenty-six pounds;
 - (iii) in the case of a house situate elsewhere, sixteen pounds, and
 - (b) to a contract made on or after the said thirty-first day of July and before the sixth day of July, nineteen hundred and fifty-seven, for letting for human habitation a house at a rent not exceeding:
 - (i) in the case of a house situate in the administrative county of London, forty pounds;
 - (ii) in the case of a house situate elsewhere, twenty-six pounds, and
 - (c) to a contract made on or after the said sixth day of July, nineteen hundred and fifty-seven, for letting for human habitation a house at a rent not exceeding:
 - (i) in the case of a house situate in the administrative county of London, eighty pounds;
 - (ii) in the case of a house situate elsewhere, fifty-two pounds.
- (2) Subject to the provisions of this Act, in any contract to which this section applies there shall, notwithstanding any stipulation to the contrary, be implied a condition that the house is at the commencement of the tenancy, and an undertaking that the house will be kept by the landlord during the tenancy, fit for human habitation:

Provided that the condition and undertaking aforesaid shall not be implied when a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for human habitation, and the lease is not determinable at the option of either party before the expiration of three years.

(3) The landlord, or any person authorised by him in writing, may at reasonable times of the day, on giving twenty-four hours' notice in writing to the tenant or occupier, enter any premises to which this section applies for the purpose of viewing the state and condition thereof.

(4) In this section the expression "landlord" means any person who lets for human habitation to a tenant any house under any contract referred to in this section, and includes his successors in title, and the expression "house" includes part of a house.

7. Notwithstanding any stipulation to the contrary, where under a contract of employment of a workman employed in agriculture the provision of a house or part of a house for his occupation forms part of his remuneration, and the provisions of the last foregoing section are inapplicable by reason only of the house or part of the house not being let to him, there shall be implied as part of the contract of employment the like con-

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dition and undertaking as would be implied under those provisions if the house or part of the house were so let, and those provisions shall apply accordingly, with the substitution of "employer" for "landlord", and such other modifications as may be necessary:

Provided that this section shall not affect the obligation of any person other than the employer to repair a house to which this section applies, or any remedy for enforcing any such obligation.

APPENDIX VIII

Occupiers' Liability Act, 1957

An Act to amend the law of England and Wales as to the liability of occupiers and others for injury or damage resulting to persons or goods lawfully on any land or other property from dangers due to the state of the property or to things done or omitted to be done there, to make provision as to the operation in relation to the Crown of laws made by the Parliament of Northern Ireland for similar purposes or otherwise amending the law of tort, and for purposes connected therewith. [6th June, 1957.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Liability in Tort

1.—(1) The rules enacted by the two next following sections shall have effect, in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them.

(2) The rules so enacted shall regulate the nature of the duty imposed by law in consequence of a person's occupation or control of premises and of any invitation or permission he gives (or is to be treated as giving) to another to enter or use the premises, but they shall not alter the rules of the common law as to the persons on whom a duty is so imposed or to whom it is owed; and accordingly for the purpose of the rules so enacted the persons who are to be treated as an occupier and as his visitors are the same (subject to subsection (4) of this section) as the persons who would at common law be treated as an occupier and as his invitees or licensees.

(3) The rules so enacted in relation to an occupier of premises and his visitors shall also apply, in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply, to regulate—

(a) the obligations of a person occupying or having control over any fixed or moveable structure, including any vessel, vehicle or aircraft; and

(b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

(4) A person entering any premises in exercise of rights conferred by virtue of an access agreement or order under the National Parks and Access to the Countryside Act, 1949, is not, for the purposes of this Act, a visitor of the occupier of those premises.

A P P E N D I X

2.—(1) An occupier of premises owes the same duty, the "common duty of care", to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases:

- (a) an occupier must be prepared for children to be less careful than adults; and
- (b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)—

- (a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
- (b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

3.—(1) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract, but (subject to any provision of the contract to the contrary) shall include the duty to perform his obligations under the contract, whether undertaken for their protection or not, in so far as those obligations go beyond the obligations otherwise involved in that duty.

(2) A contract shall not by virtue of this section have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other like operation by persons other than himself, his servants and persons acting under his direction and control.

THIRD PARTY INSURANCE

(3) In this section "stranger to the contract" means a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and accordingly includes a party to the contract who has ceased to be so entitled.

(4) Where by the terms or conditions governing any tenancy (including a statutory tenancy which does not in law amount to a tenancy) either the landlord or the tenant is bound, though not by contract, to permit persons to enter or use premises of which he is the occupier, this section shall apply as if the tenancy were a contract between the landlord and the tenant.

(5) This section, in so far as it prevents the common duty of care from being restricted or excluded, applies to contracts entered into and tenancies created before the commencement of this Act, as well as to those entered into or created after its commencement; but, in so far as it enlarges the duty owed by an occupier beyond the common duty of care, it shall have effect only in relation to obligations which are undertaken after that commencement or which are renewed by agreement (whether express or implied) after that commencement.

4.—(1) Where premises are occupied by any person under a tenancy which puts on the landlord an obligation to that person for the maintenance or repair of the premises, the landlord shall owe to all persons who or whose goods may from time to time be lawfully on the premises the same duty, in respect of dangers arising from any default by him in carrying out that obligation, as if he were an occupier of the premises and those persons or their goods were there by his invitation or permission (but without any contract).

(2) Where premises are occupied under a sub-tenancy, the foregoing subsection shall apply to any landlord of the premises (whether the immediate or a superior landlord) on whom an obligation to the occupier for the maintenance or repair of the premises is put by the sub-tenancy, and for that purpose any obligation to the occupier which the sub-tenancy puts on a mesne landlord of the premises, or is treated by virtue of this provision as putting on a mesne landlord, shall be treated as put by it also on any landlord on whom the mesne landlord's tenancy puts the like obligation towards the mesne landlord.

(3) For the purposes of this section, where premises comprised in a tenancy (whether occupied under that tenancy or under a sub-tenancy) are put to a use not permitted by the tenancy, and the landlord of whom they are held under the tenancy is not debarred by his acquiescence or otherwise from objecting or from enforcing his objection, then no persons or goods whose presence on the premises is due solely to that use of the premises shall be deemed to be lawfully on the premises as regards that landlord or any superior landlord of the premises, whether or not they are lawfully there as regards an inferior landlord.

(4) For the purposes of this section, a landlord shall not be deemed to have made default in carrying out any obligation to the occupier of the premises unless his default is such as to be actionable at the suit of the occupier or, in the case of a superior landlord whose actual obligation is to an inferior landlord, his default in carrying out that obligation is actionable at the suit of the inferior landlord.

(5) This section shall not put a landlord of premises under a greater duty than the occupier to persons who or whose goods are lawfully on the premises by reason only of the exercise of a right of way or of rights conferred by virtue of an access agreement or order under the National Parks and Access to the Countryside Act, 1949.

APPENDIX

(6) Nothing in this section shall relieve a landlord of any duty which he is under apart from this section.

(7) For the purposes of this section, obligations imposed by any enactment in virtue of a tenancy shall be treated as imposed by the tenancy, and "tenancy" includes a statutory tenancy which does not in law amount to a tenancy, and includes also any contract conferring a right of occupation, and "landlord" shall be construed accordingly.

(8) This section applies to tenancies created before the commencement of this Act, as well as to those created after its commencement.

Liability in Contract

5.—(1) Where persons enter or use, or bring or send goods to, any premises in exercise of a right conferred by contract with a person occupying or having control of the premises, the duty he owes them in respect of dangers due to the state of the premises or to things done or omitted to be done on them, in so far as the duty depends on a term to be implied in the contract by reason of its conferring that right, shall be the common duty of care.

(2) The foregoing subsection shall apply to fixed and moveable structures as it applies to premises.

(3) This section does not affect the obligations imposed on a person by or by virtue of any contract for the hire of, or for the carriage for reward of persons or goods in, any vehicle, vessel, aircraft or other means of transport, or by or by virtue of any contract of bailment.

(4) This section does not apply to contracts entered into before the commencement of this Act.

General

6. This Act shall bind the Crown, but as regards the Crown's liability in tort shall not bind the Crown further than the Crown is made liable in tort by the Crown Proceedings Act, 1947, and that Act and in particular section two of it shall apply in relation to duties under sections two to four of this Act as statutory duties.

7. The limitation imposed by paragraph (1) of section four of the Government of Ireland Act, 1920, precluding the Parliament of Northern Ireland from making laws in respect of the Crown or property of the Crown (including foreshore vested in the Crown) shall not extend to prevent that Parliament from amending the law of tort, or enacting provisions similar to section five of this Act, so as to bind the Crown in common with private persons; but as regards the Crown's liability in tort, no such amendments shall bind the Crown further than the Crown is made liable in tort under the law of Northern Ireland by Orders in Council under section fifty-three of the Crown Proceedings Act, 1947.

8.—(1) This Act may be cited as the Occupiers' Liability Act, 1957.

(2) This Act shall not extend to Scotland, nor to Northern Ireland except in so far as it extends the powers of the Parliament of Northern Ireland.

(3) This Act shall come into force on the first day of January, nineteen hundred and fifty-eight.

APPENDIX IX

Specimen Proposal Form

GENERAL THIRD PARTY INSURANCE

Limit of indemnity required £..... for any one accident.
(In addition to the above sum, the Company pays, in the terms of its policy, the law costs incurred in defending or settling claims.)
Unless otherwise agreed the liability of the Company is unlimited in any Period of Insurance.

APPENDIX

8. Describe fully and state position of— (a) any trap doors, cellar flaps, or other openings in floors, pavement, etc., including pavement lights. (b) any outside advertising boards or signs.	(a) (b)																										
9. Will any machinery, electrical appliance or pressure vessel be used? If so, is such plant insured against breakdown or explosion?																											
10. What acids, gases, chemicals or explosives will be used, and to what extent?																											
11. Will any radioactive substances be used? If so, give precise details																											
12. Has any proposal for insurance of the risk been previously made or has the risk been previously insured? If so, state with what Insurers and whether such proposal or renewal has been declined or an increased rate required																											
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2" style="text-align: center; width: 15%;">Year</th> <th rowspan="2" style="text-align: center; width: 15%;">No. of Accidents</th> <th colspan="2" style="text-align: center; border-bottom: 1px solid black;">AMOUNT</th> </tr> <tr> <th style="text-align: center;">Paid</th> <th style="text-align: center;">Estimated Outstanding</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">19.</td> <td style="text-align: center;">.</td> <td style="text-align: center;">£</td> <td style="text-align: center;">£</td> </tr> <tr> <td style="text-align: center;">19.</td> <td style="text-align: center;">.</td> <td style="text-align: center;">.</td> <td style="text-align: center;">.</td> </tr> <tr> <td style="text-align: center;">19.</td> <td style="text-align: center;">.</td> <td style="text-align: center;">.</td> <td style="text-align: center;">.</td> </tr> <tr> <td style="text-align: center;">19.</td> <td style="text-align: center;">.</td> <td style="text-align: center;">.</td> <td style="text-align: center;">.</td> </tr> <tr> <td style="text-align: center;">19.</td> <td style="text-align: center;">.</td> <td style="text-align: center;">.</td> <td style="text-align: center;">.</td> </tr> </tbody> </table>		Year	No. of Accidents	AMOUNT		Paid	Estimated Outstanding	19.	£	£	19.	19.	19.	19.
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		Paid	Estimated Outstanding																								
19.	£	£																								
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13. What claims have been made upon the Proposer during the past five years in connection with accidents to members of the public? (Accidents which have not resulted in claims are to be included)																											
14. EXTENSIONS OF COVER																											
Is it desired to insure against liability for accidents arising— (a) out of the use on the Proposer's business of pedal cycles? If so, state number of such cycles (i) owned by the Proposer (ii) belonging to employees	(i) (ii)																										
(b) out of fire and explosion? (Accidents caused by the bursting of steam boilers or other steam pressure vessels are not covered by this extension)																											
(c) from goods sold? If so, please attach list of products and state against each the estimated annual turnover, to what extent they are marketed overseas and in what countries																											
I/We desire to insure with the _____ COMPANY, LIMITED, in respect of Third Party risks. I/We warrant that the above statements are true and complete and that nothing materially affecting the risk has been concealed by me/us, and I/we agree (should the premiums or any part thereof be calculated on estimates) to render at the end of each period of insurance a statement in the form required and to pay premium on any amounts in excess of the estimates upon which premium has been based. I/we further agree that this proposal shall be incorporated in and taken as the basis of the proposed contract between me/us and the _____ COMPANY, LIMITED, and I/we agree to accept a Policy in the Company's usual form for this class of insurance. 19_____ Signature (Signing this Form does not bind the Proposer to complete the Insurance.)																											

APPENDIX X

Specimen Policy Form

GENERAL THIRD PARTY INSURANCE

WHEREAS the Insured carrying on the Business and no other for the purposes of this Insurance by a proposal and declaration which shall be the basis of this Contract and is deemed to be incorporated herein has applied to the COMPANY LIMITED (hereinafter called the Company) for the insurance hereinafter contained in respect of accidents occurring during any Period of Insurance and has paid or agreed to pay the Premium as consideration for such insurance.

NOW THIS POLICY WITNESSETH that subject to the Terms Exceptions and Conditions contained herein or endorsed hereon the Company will indemnify the Insured in respect of accidents happening at the Premises and in connection with the Business against liability at law for damages in respect of

- (i) death of or bodily injury (including illness) to any person not being a member of the Insured's family nor a person who at the time of the accident is engaged in and upon the service of the Insured under a contract of service or apprenticeship
- (ii) damage to property not belonging to nor held in trust by nor in the custody or control of the Insured or a member of the Insured's family.

The liability of the Company in respect of or arising out of one occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause shall not exceed the Limit of Indemnity.

In respect of a claim for damages to which the indemnity expressed in this Policy applies the Company will also pay—

- (a) all costs and expenses recovered by any claimant from the Insured and
- (b) all costs and expenses incurred with the written consent of the Company.

In the event of the death of the Insured the Company will in respect of the liability incurred by the Insured indemnify the Insured's personal representatives in the terms of and subject to the limitations of this Policy provided that such personal representatives shall as though they were the Insured observe fulfil and be subject to the Terms Exceptions and Conditions so far as they can apply.

EXCEPTIONS

The Company shall not be liable in respect of—

- (1) accidents caused directly or indirectly by or traceable to the bursting of boilers fire explosion animals cycles horsedrawn vehicles in Ireland mechanically-propelled vehicles aircraft ships boats or craft of any kind or foul berthing or passenger lifts or cranes.

APPENDIX

- (2) claims arising out of—
 - (a) the action of any commodity used or applied or administered by the Insured or by any employee or agent of the Insured or sold or supplied by the Insured for use consumption or application
 - (b) injury or damage arising in the course of or as the result of remedial or other advice or treatment given or administered by the Insured or by any person acting on behalf of the Insured
 - (c) damage to any building structure or land caused by vibration or by the withdrawal or weakening of support due or alleged to be due to any operations of the Insured or any person acting on behalf of the Insured
 - (d) damage to property of any description due to the manufacture construction alteration repair or treatment of such property by the Insured or by any person acting on behalf of the Insured
 - (e) liability assumed by the Insured by agreement unless such liability would have attached to the Insured notwithstanding such agreement
- (3) any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power

IN WITNESS WHEREOF the undersigned acting on behalf of and under the authority of the Company hath hereunto set his hand

SCHEDULE

Policy No. T.

The Insured	
The Business	
Limit of Indemnity	
Period of Insurance. (a) From To (b) Any subsequent Period for which the Insured shall pay and the Company shall agree to accept the Renewal Premium.	Renewal Date.
Premium £ Subject to adjustment in terms of Condition 4.	Renewal Premium £ Subject to adjustment in terms of Condition 4.
The Premises	
Signed on the	Examined

ENDORSEMENTS

THIRD PARTY INSURANCE

CONDITIONS

1. This Policy and the Schedule shall be read together and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such meaning wherever it may appear.

2. The Insured shall give notice in writing to the Company as soon as possible after the occurrence of any accident with full particulars thereof. Every letter claim writ summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given in writing to the Company immediately the Insured shall have knowledge of any impending prosecution or inquest in connection with any accident for which there may be liability under this Policy. No admission offer promise payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim. The Insured shall give all such information and assistance as the Company may require.

3. In connection with any claim or claims against the Insured arising out of one occurrence or all occurrences of a series consequent on or attributable to one source or original cause the Company may at any time pay to the Insured the Limit of Indemnity (after deduction of any sum or sums already paid as damages) or any lesser amount for which any such claim or claims can be settled and upon such payment the Company shall relinquish the conduct and control of and be under no further liability in connection with such claim or claims except for costs and expenses recoverable from the Insured or incurred with the written consent of the Company in respect of matters prior to the date of such payment.

4. If any part of the Premium or Renewal Premium is calculated on estimates furnished by the Insured the Insured shall keep an accurate record containing all particulars relative thereto and shall at all times allow the Company to inspect such record. The Insured shall within one month from the expiry of each Period of Insurance furnish to the Company such particulars and information as the Company may require. The premium for such period shall thereupon be adjusted and the difference paid by or allowed to the Insured as the case may be.

5. If at the time any claim arises under this Policy there be any other insurance covering the same liability the Company shall not be liable to pay or contribute more than its ratable proportion of any such claim and costs and expenses in connection therewith.

6. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at the Insured's last known address and in such event the Insured shall become entitled to the return of a proportionate part of the Premium or Renewal Premium corresponding to the unexpired period of insurance.

7. The Insured shall take reasonable precautions to prevent accidents and illness and to comply with all statutory or other obligations and regulations imposed by any Authority and shall maintain the Premises and all works machinery and plant in sound condition. In the event of the discovery of any defect or danger the Insured shall forthwith cause such defect or danger to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances may require.

XXX

A P P E N D I X

8. The due observance and fulfilment of the Terms Conditions and Endorsements so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.

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THIRD PARTY INSURANCE

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of the work upon which the insured's workmen may have been engaged, in or on the premises concerned.

In connection with fire and explosion risks substantial limits of indemnity are frequently sought, in view of the possible catastrophe hazard should a fire, negligently caused, spread to surrounding properties. (See Chapter VII.)

Third party insurances for building contractors at times relate to one particular contract only, and the cover may run from, say, six months to six years or even longer. A quotation is usually requested at the "tender" stage, and wide protection is needed, according to the type of contract. Often, too, the third party insurance is dealt with in conjunction with a contractors' "all risks" enquiry. Where standard conditions of contract are applicable they will often be those of the I.Mech.E./I.E.E. Model Form or the R.I.B.A. Schedule of Conditions of Building Contractors—see p. 96. If the work is to be carried out overseas, a wide variety of forms of contract may be concerned.

The underwriter will need to see the general conditions of contract, the form of tender, possibly the bill of quantities, with site, ground and elevation plans. The contract price and the period of the contract, as well as the maintenance period, are material considerations. A proposal form is rarely used, but a special questionnaire may be issued, so that the insurers may know whether the proposer is the principal contractor (and if not, his name), whether other contractors are working on the site, whether the proposer will employ sub-contractors (with details) with particulars of the proposer's own employees, what plant and machinery will be used, and the extent to which explosives will be employed.

The policy will be specially drafted to cover certain contractual liabilities, subject to the terms, exceptions and conditions of the policy, fire and explosion risks, and possibly subsidence and other particular hazards.

BULK PETROL STORAGE INSTALLATIONS

Such risks call for consideration in the light of a surveyor's report which should have particular regard to the possible consequences of the escape of petrol. Many such installations, known as "ocean installations", are situated on the banks of estuaries and rivers. Petrol may escape and reach the waterway and in the event of any considerable quantity becoming ignited, the subsequent claims, by reason of damage to vessels, may be heavy. Cases have been known where, because of the escape of petrol within the installation compound itself, the petrol has

seeped down through the sandy base only to reappear on the surface of the ground some distance from the compound, with the consequent risk of fire on the premises of others.

Apart from the fire and explosion risks, the hazard is not generally great, unless it is desired to make provision for foul berthing risks, when a specialist report from a marine surveyor is required.

CAFÉS

These risks are dealt with under Restaurants, see p. 122.

CATTLE FOOD MANUFACTURERS

The only special risk under this heading relates to claims arising out of defects or alleged defects in the firm's products. Cattle foods are often supplied to the owners of pedigree herds of great value, and illness or even death caused to such animals may involve substantial financial liabilities. It does not follow that all illness attributable to the insured's products will necessarily involve the insured in liability, for failure to observe instructions as to feeding or even careless storage may be the cause. Nevertheless, claims may be troublesome and substantial premiums, based on turnover, are required.

CHEMISTS—RETAIL

The retail shop risk differs but little from that of other retail shops, except that it is usually necessary to provide for the delivery of medicines and other goods by hand or cycle. The most serious risk is the incorrect making up of prescriptions, but this is a risk which is not covered by the ordinary form of policy. (See Chapter XIII.)

CHEMISTS—WHOLESALE AND MANUFACTURING

Apart from the risk on the insured's own premises, which is generally little different from that of any other factory premises, the principal hazard lies in the preparation and bottling or boxing of the commodities sold to the public. From their nature, medicines may give rise to serious third party claims and a large proportion of them are in practice caused by carelessness in labelling. Many firms of manufacturing chemists prepare medicines for others which are not sold under their own name, and it may be that indemnities will have been given to the proprietor of the prescription in respect of claims arising out of defects and mistakes. Such indemnities may need special treatment.